

Robert B. Tierney  
Chair

May 29, 2014

ISSUED TO:

1 Centre Street  
9<sup>th</sup> Floor North  
New York, NY 10007

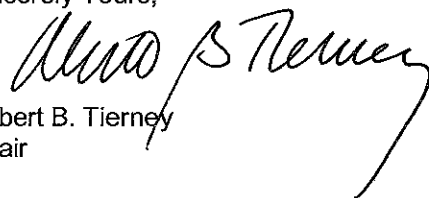
**Richard F. Czaja, President**  
**Stahl York Avenue Co., LLC**  
**277 Park Avenue, 47<sup>th</sup> Floor**  
**New York, NY 10172**

212-669-7888 tel  
212 669 7955 fax

Re: **Denial of Notice to Proceed**  
LPC-127519  
CD 15-8240  
429 East 64<sup>th</sup> Street and 430 East 65<sup>th</sup> Street  
City & Suburban Homes, First Avenue Estate  
INDIVIDUAL LANDMARK  
Borough of Manhattan  
Block/Lot 1459/22

Pursuant to Section 25-309(a)(1) of the Administrative Code of the City of New York, the Landmarks Preservation Commission, at the Public Meeting of May 20, 2014, after the Public Hearings of January 24, 2012 and June 11, 2013, and the Public Meeting of October 29, 2013, and after reviewing and considering the record, including all testimony and materials submitted on behalf of the applicant, and testimony and materials submitted by the public, voted to adopt the attached Resolution, dated May 20, 2014 (the "Resolution"), to deny your application seeking a Notice to Proceed to demolish 429 East 64<sup>th</sup> Street and 430 East 65<sup>th</sup> Street, in the Borough of Manhattan, finding that the applicant had failed to establish to the satisfaction of the Commission that the improvement parcel or parcels which include(s) the improvements was/were not capable of earning a reasonable return. Please see the Resolution for a detailed explanation of the decision.

Sincerely Yours,



Robert B. Tierney  
Chair

Cc: Sarah Carroll, Director of Preservation/LPC; William Neeley, Deputy  
Director/Preservation/LPC; Mark A. Silberman, General Counsel/LPC; Paul Selver, Esq.



**In the Matter of an Application for a Finding Pursuant to Section 25-309(a)(1) of  
the Landmarks Law that 429 East 64<sup>th</sup> Street and 430 East 65<sup>th</sup> Street are  
Incapable of Earning a Reasonable Return**

**May 20, 2014**

**The Application**

On October 7, 2010, Stahl York Avenue Co., LLC, the owner of 429 East 64<sup>th</sup> Street and 430 East 65<sup>th</sup> Street (hereafter the "Subject Buildings"), Manhattan Tax block 1459, lot 22, applied to the Landmarks Preservation Commission ("LPC") to demolish the Subject Buildings on the grounds that they were incapable of earning a "reasonable return" as defined in section 25-302(v) and section 25-309(a)(1) of Title 25, Chapter 3 of the New York City Administrative Code (hereafter the "Landmarks Law").

In its application, Stahl York Avenue Co., LLC (hereafter the "Owner," "Stahl," or "Applicant") conceded that demolition would not be appropriate under section 25-307 of the Landmarks Law. Application at 8. In addition, the Owner stated that it intends to demolish the buildings and construct a new building on the site, and that it "has incurred expenses in analyzing the economic feasibility of various redevelopment scenarios and, in anticipation of eventually demolishing the Subject Buildings, has left many apartments in these buildings vacant after their occupants have moved out." Application at 7-8. Stahl stated that it is "negotiating to arrange for the relocation of the handful of rent controlled tenants in the Subject Buildings to other housing accommodations," and that "[o]nce this is done, [it] will file the documentation with [the Division of Housing and Community Renewal] that is necessary to obtain an order requiring the Subject Buildings' rent-stabilized tenants to accept relocation assistance." Application at 7. Finally, the Owner has stated that "specific plans for a new development . . . have not yet been prepared." *Id.*

**Background**

The City and Suburban Homes Company First Avenue Estate (hereafter the First Avenue Estate, or Complex) is a full block of 13 central light court model tenement buildings, bounded by York Avenue, First Avenue and East 64<sup>th</sup> and East 65<sup>th</sup> Streets. Built between 1898 and 1915, this block is one of only two full block light court model tenements in the United States.<sup>1</sup> All of the buildings in the Complex are six story masonry buildings, with central light courts. With the exception of 415 East 64<sup>th</sup> Street, all of the buildings are walk-ups. The Subject Buildings were the last two buildings constructed on the block.

On April 24, 1990, LPC designated the First Avenue Estate as a landmark. In designating the Complex the Commission found, among other things, that it was the oldest extant project of the largest and most successful of the privately financed limited-dividend companies that attempted to develop model affordable housing for the working poor, that the light-court tenement was a viable alternative to dark unventilated dumbbell apartments, and that it was an important achievement in the social housing movement. The Owner of the Complex, the same or a related entity that currently owns the Complex, opposed designation. On August 16, 1990, the Board of Estimate, at its last meeting before it was abolished by the new City Charter, voted 6 to 5 to modify the landmark site by removing the Subject

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<sup>1</sup> The other, the City and Suburban Homes Company York Avenue Estate, located on the block bounded by York Avenue, East River Drive and East 78<sup>th</sup> and East 79<sup>th</sup> Streets, is also a designated landmark.

Buildings, the two eastern most buildings of the complex. A challenge to the Board of Estimate's decision was unsuccessful.

The Commission recalendared the Subject Buildings on October 10, 2006, after learning that the Owner had obtained permits from the Department of Buildings ("DOB") to perform façade work and window replacement. This work was not required to address any health or safety concerns, but was motivated solely by the Owner's desire to prevent the Commission from redesignating the Subject Buildings so that it could proceed with demolishing them and redeveloping the site. At the time of calendaring none of the approved work had been done. On November 14, 2006, the LPC held a public hearing on amending the designation of the First Avenue Estates to include the Subject Buildings.

In an effort to defeat redesignation the Owner commenced the work approved by the DOB permits, which included stripping the two buildings of their ornament, enlarging window openings and installing new and inappropriate windows, stuccoing the buildings and painting them a garish reddish pink color. Notwithstanding that work had begun, on November 21, 2006 the LPC unanimously voted to amend the designation report of the First Avenue Estates to include the Subject Buildings. In redesignating the buildings, the Commission found that they were the last light-court tenement erected by City and Suburban Homes Company and their addition to the First Avenue Estate enhanced the understanding of the work of the company, since it encompassed the earliest and latest surviving examples of the light-court model; that they had been removed by the Board of Estimate; that they were similar in size and scale to the other buildings in the Complex and contributed to the sense of continuity of the Complex. The City Council affirmed the resolution on February 1, 2007. Although little of the approved work had been done at the time of the Commission's vote, the Owner continued to work after designation.

The Owner challenged the designation. On September 11, 2008 the New York State Supreme Court found in favor of the LPC and upheld the re-designation. This decision was upheld by the Appellate Division, First Department on June 24, 2010, and, on November 18, 2010, leave to appeal to the Court of Appeals was denied.

### **The Subject Buildings**

The Subject Buildings contain 190 apartments. The Owner has estimated the gross building area is 84,826 gross square feet, and 70,406 leasable square feet.<sup>2</sup> The apartments average 446 gross square feet and 371 leasable square feet. The Subject Buildings contain three large courtyards. There are windows on all four facades and facing into the courtyards.

Most apartments in the Subject Buildings are subject to rent stabilization rules, with a small number subject to rent control. According to the Owner, the mean average rent of occupied apartments is approximately \$840/month; the median last listed rent for vacant apartments is approximately \$857.<sup>3</sup>

According to testimony and documents filed by the Owner, at the time of designation there were 53 vacant apartments. Since designation the Owner has continued its policy of not re-renting

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<sup>2</sup> The owner's estimate of leasable square feet was reduced from 72,102 to 70,406 during the course of the application. Compare, Cushman February 5, 2009 Report, p. iii to Cushman May 1, 2010 Report, p. iii.

<sup>3</sup> Stahl, May 23, 2011, at 2. These numbers exclude rents from apartments rented to Memorial Sloan Kettering ("MSK"), as Stahl believes these are not typical. *Id.*

apartments as they become vacant. At the time the hardship application was filed 107 apartments were vacant. There are currently 110 vacant apartments.<sup>4</sup>

### **Application Materials, Submissions and Public Hearings and Meetings**

On October 7, 2010, the Owner submitted the application and a Report by Cushman & Wakefield (hereafter "Cushman"), dated February 5, 2009; and a Report by Cushman, dated May 1, 2010.

By letter dated February 3, 2011, LPC Counsel Mark Silberman wrote to Paul Selver, Counsel to the Owner (hereafter "Selver"), seeking additional information. Specifically, Mr. Silberman sought a more detailed scope of work, with quantities, and estimates to substantiate renovation cost estimates; asking for an explanation as to why the Owner believed newly renovated apartments would rent for less than the current rent controlled and regulated tenants were paying; and seeking information about how mechanical and maintenance services at the Subject Buildings were shared with the Other Buildings in the complex.

The Owner responded to these questions on July 1, 2011 with a letter from Mr. Selver, a letter from Stahl, a new cost estimate by ProjectConsult, dated March 23, 2011, for the Minimum Renovation Scenario, and an economic analysis by Cushman dated July 1, 2011.

On January 24, 2012, the LPC held the first public hearing on the application. The Applicant, including its consultants Cushman and Gleeds (replacing ProjectConsult) presented its case. HR&A, a consulting company representing opponents of the hardship application, looked at five to six story walkup buildings in the vicinity of the Complex. HR&A discounted the rents from these buildings by 12.5% to account for the allegedly inferior layouts and the lower level of renovation of the apartments in the Subject Buildings. Based on its research, HR&A estimated that vacant apartments could lease for an average of \$49 per leasable square foot, or an average of \$1508 per apartment per month. In addition, members of the public and elected officials testified.

On February 29, 2012, LPC wrote to Mr. Selver with follow-up questions to the public hearing testimony and submissions from the Commissioners and LPC staff.

On October 12, 2012, the Owner submitted a response to the public testimony and submitted additional information. The Owner noted that answers to the Commissioners' questions in the February 29, 2012 letter would be submitted separately.

On February 20, 2013, the Owner submitted lengthy answers to the Commissioners' questions in the February 29, 2013 letter.

On June 11, 2013, the Commission held a second public hearing to allow the Owner to present its responses to public testimony at the January 24, 2012 public hearing and its answers to the Commissioners' questions. HR&A also testified again. HR&A adjusted its projection of average rent to \$1432 to account for the effect of rent control and rent stabilization rules on increases to rent.

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<sup>4</sup> Application, p. 3, footnote 1. Stahl's decision to continue warehousing apartments in the Subject Buildings is reflected in the increasing number of vacancies in its submissions. In the C&W February 2009 Report there were 84 vacancies; in the C&W May 2010 Report there were 97; the number increased to 107 at the time the hardship application was filed in October 2010; and was 110 in the Gleeds August 27, 2012 Report.

On October 10, 2013, the Owner submitted additional information in response to the June 11, 2013 HR&A Report. Specifically, the Owner submitted a letter from Counsel, a letter from Cushman, a letter from Paul Korngold, Esq., and a letter from Stahl, all dated October 10, 2013, as well as a letter dated October 11, 2013 from Gleeds.

On October 29, 2013, the LPC held a Public Meeting to discuss the hardship application. The Applicant presented its responses to the public testimony at the June 11, 2013 public hearing.

By email dated October 23, 2013, LPC staff requested additional information from the Owner related to floor plans and apartment stacking for the Subject Buildings, and information about the gross and leasable square footage of apartments in the Other Buildings.

By email dated October 29, 2013, Counsel to the Owner responded to the October 23 email with marked up floor plans for the Subject Buildings. With respect to gross and leasable square footage, Ownership stated that the Subject Buildings have an average gross square footage of 446 and net leasable square footage of 371. Counsel stated that the average for the Other Buildings in the complex was 532 gross square feet per apartment. Ownership noted that it did not have complete information but, based on sample measurements, it had previously estimated that the average apartment in the Other Buildings was 450 net leasable square feet.

By email dated October 30, 2013, LPC staff raised additional questions about the materials submitted by the Owner in support of its application. Specifically, LPC staff sought clarification about amounts for "general conditions, overhead and profits" in the cost estimates; an explanation about the methodologies and criteria used by the Owner's employees in determining what level of renovation would be applied to each vacant apartment; and an explanation about the extent of ProjectConsult/Gleeds' inspection of vacant apartments, who determined renovation levels, and whether ProjectConsult/Gleeds' estimate for renovations in the March 23, 2011 report and subsequent reports was based primarily on the 14 sample apartments reviewed in the report(s).

By email dated October 31, 2013, LPC staff asked the Owner for information on income and expenses for the Other Buildings for 2006-2009.

On November 12, 2013, the Owner submitted additional information in support of its application, including floorplans for the Other Buildings, a letter from Gleeds dated November 11, 2013, explaining how it had arrived at its cost estimates, and a letter from Stahl, dated November 12, 2013, in response to questions by the Commission staff about relative size of apartments in the Other Buildings, efforts by Stahl to rent apartments in the Other Buildings, defending its estimate that renovated apartments could be rented for no more than \$40 per square foot and disputing HR&A's claim that renovated apartments could be leased for substantially more, comparing apartments in the Other Buildings to apartments in the Subject Buildings, and defending its claim that apartments in the Other Buildings were easier to rent.

On November 18, 2013, the Owner responded to the October 31, 2013 email seeking income and expense information for the Other Buildings. The Owner provided information for 2009 but declined to provide information for previous years because, the Owner asserted, the Other Buildings were not the subject of the hardship proceedings and the years before 2009 did not concern the test year. The Owner also stated that some of this information had been provided to the New York State Tax Commission and would, therefore, be publicly accessible.

By letter dated November 22, 2013, LPC raised questions about the Owner's November 12, 2013 submissions. Specifically, LPC asked about the number of apartments on the other tax lots that

comprise the rest of the City and Suburban complex, given the error in the Owner's tax filings; the net leasable size of the apartments; and asking why the future assessed value of the Subject Buildings shouldn't be calculated using the Department of Finance's "income" approach rather than the "cost" approach.

On December 10, 2013, the Selver submitted information in response to the questions raised in the November 22, 2013 letter. Specifically, Selver submitted a letter from Stahl and a letter from Cushman, both dated December 9, 2013. Stahl included photographic information on all vacant apartments. The Owner provided updated information on the number of apartments per lot; stated that the error in apartments per lot did not affect the operating expenses for lot 10; provided updated information on net leasable apartment size in the Subject Buildings and the Other Buildings; and, finally, defending the use of the "cost" approach for determining post-renovation assessed value.

By letter dated January 9, 2014, LPC sought additional information about how the Applicant had estimated the size of apartments in the Other Buildings and the Subject Buildings, the methodology it used to determine which sample apartment lines to measure in the Other Buildings, further information on use of the cost approach for projecting post-renovation assessed value, and, finally, asking why in the hardship analysis a portion of income from laundry in the Other Buildings shouldn't be assigned to the Subject Buildings.

By email dated January 31, 2014, LPC sought confirmation about whether rents listed in the February 2009 report were "legal" or "preferential" rents.

By letter from Gregg Wolpert of Stahl, dated February 6, 2014, the Owner provided responses to questions raised in the LPC email of January 9, 2014. Specifically, the Owner explained how it had measured apartments in the Subject Buildings and the representative sample of apartments in the Other Buildings; stated, without supporting information, that the "apartment lines measured [in the Other Buildings] were representative of the apartment mix in most of the FAE buildings"; stated that a further submission from Paul Korngold, Esq. about use of the "cost" approach for determining post-renovation assessed value would be submitted separately; and, finally, explaining why the Owner did not allocate revenue from shared services or explore use of the basement for additional income producing activities such as laundry.

On February 12, 2014, the Owner responded to the question raised in the LPC's January 31, 2014 email about the status of rents for apartments in Other Buildings, cited by Cushman in the February 5, 2009 Report, stating that the Owner could not "readily ascertain" if the listed rents were legal or preferential rents, because the Owner applies allowable increases to preferential rents as well as legal rents. Stahl also noted that "[t]wo of the three apartments that were rented at levels above \$50/sf were subsequently vacated, and the revised (preferential) rents were lowered . . . from \$58.91/sf to \$52.36/sf and . . . from \$51.83/sf to \$48.40/sf." The Owner also noted that 2009 was a weaker year for leases than 2007 and 2008, when most of the rents cited by Cushman would have been signed.

On February 26, 2014, the Commission received a letter from Korngold, dated February 25, 2014, responding to LPC's January 9, 2014 letter concerning projecting post-renovation assessed value using the cost approach. Mr. Korngold defended the use of the cost approach and cited to 2010/2011 cost guidelines posted by the Department of Finance. Mr. Korngold noted this was "the last time the Department of Finance publicly made this information available." *Id.* at 2.

On February 26, 2014, LPC asked when Mr. Korngold had last utilized the cost approach in seeking a reduction in assessment.

On February 28, 2014, LPC received a letter from Mr. Korngold discussing the process of challenging an assessment and the need to provide cost information to the Tax Commission. Mr. Korngold notes that it is not possible to determine the basis of the Tax Commission's decisions because there is no decision, just a numerical number.

Between April 8, 2014 and April 24, 2014, the LPC sought clarification of Gleeds' estimate for widow work. Gleeds responded by letters dated April 17, 2014 and April 25, 2014, and changed its estimate both in terms of the cost of the window work and increasing the number of windows that were to be changed from 309 to 618. The cost of the window work decreased from \$5,422 per window to \$2,982 per window.

On April 23, 2014, LPC staff provided the Applicant with a letter from the Department of Finance indicating that the Department uses the income approach for calculating assessments for income-producing property, and seeking information on soft costs.

On May 1, 2014, the Applicant sought additional time to respond to the Commission's April 23, 2014 requests. This request was granted on May 2, 2014.

On May 7, 2014, the Applicant responded to the April 23, 2014 letter by submission of a letter from Mr. Korngold, dated May 5, 2014, showing the Department of Finance adjusted the assessment for the Subject Properties in 2008/2009 and 2009/2010 tax years, based on construction costs; a letter from Stahl, dated May 2, 2014, discussing soft costs and projecting soft costs at between 32-37 percent of hard costs; and a letter from Cushman, dated May 5, 2014, supporting Stahl's estimation for soft costs, as well as projecting that if soft costs are included the return on the Base Building and Apartments scenario the return is between 0.069 and negative 0.077 percent.

On May 13, 2014, LPC staff forward to the Applicant a response from the Department of Finance to Mr. Korngold's May 5, 2014 letter, disputing Korngold's characterization of Department policy, and reiterating that the Department uses the income approach to value income producing properties.

The Applicant responded to the statement by the Department of Finance, by letter dated May 13, 2014 from Mr. Selver, noting the extended correspondence on this issue and reiterating the Applicant's responses.

On May 9, 2014, LPC staff forwarded to the Applicant documents from the Tax Commission indicating that Stahl had filed for a consolidated filing on the grounds that all of the tax lots on Block 1459, as well as the adjacent lot 22 on block 1460, were operated as a single economic unit or otherwise should be valued together for purposes of real estate assessment. The documents included a statement from Stahl's tax counsel that the five lots were operated as single unit, that the buildings were in need of significant repair, that the buildings were landmarked and that a hardship proceeding had been filed to lift some of the restrictions, and that apartments were being held off the market.

On May 12, 2014, the Applicant responded by letter from Stahl, dated May 12, 2014, in which Stahl disavowed the filing and argued that it did not know of the statement filed in connection with the consolidated filing, pointing out that the statement by tax counsel included mistakes and mischaracterizations, and that tax counsel had written the statement on his own initiative as a "shortcut vehicle" when representing multiple adjacent properties under common ownership in the hopes of attaining "lower assessments." Stahl, and Selver, by letter dated May 12, 2014, also argued that the material is irrelevant because the Improvement Parcel was and should only be tax lot 22.



On May 16, 2014, LPC staff informed the Applicant that Stahl had sought consolidated tax filings for all of the lots on block 1459 and the adjacent block 1460 lot 22 between 2008 and 2012.

The Applicant responded to the May 16 email by letter from Selver, dated May 19, 2014, in which Mr. Selver reported that "to the best of their knowledge, no one in the Stahl organization made the decision to request such consolidated hearings or was previously informed of that action. Stahl officials assume that this decision was made by Marcus & Pollack, LLP, Stahl's tax certiorari counsel during the years that you cite." In addition, Selver continued to argue that the fact of consolidated tax filings have "no relevance to any issue involved in the pending hardship."

### **The Hardship Standard and Burden of Proof**

The Landmarks Law provides for relief from the provisions of the law if the improvement parcel that includes the designated improvement, as existing at the time of the application, is "not capable of earning a reasonable return." Where the application seeks to demolish the improvement, the owner must show that it "seeks in good faith to demolish such improvement immediately (a) for the purpose of constructing on the site thereof with reasonable promptness a new building or other income-providing facility." Admin. Code §25-309 (a)(1)(a) and (b)(1).

The "improvement parcel" for purposes of a hardship application is the "unit of real property which (1) includes a physical betterment constituting an improvement and the land embracing the site thereof, and (2) is treated as a single entity for purposes of levying real estate taxes." Admin Code §25-302(j).

The Landmarks Law defines "capable of earning a reasonable return" as "[h]aving the capacity, under reasonably efficient and prudent management, of earning a reasonable return." For purposes of this definition, the "net annual return," as defined below, is "presumed to be the earning capacity of such improvement parcel, in the absence of substantial grounds for a contrary determination by the commission." Admin. Code §25-302(c).

The Landmarks Law defines "reasonable return" as a "net annual return of six per centum of the valuation of an improvement parcel." Admin. Code §25-302(v)(1). The net annual return is further defined as "the amount by which the earned income yielded by the improvement parcel during a test year exceeds the operating expenses of such parcel during such year, excluding mortgage interest and amortization, and excluding allowances for obsolescence and reserves, but including an allowance for depreciation of two per centum of the assessed value of the improvement, exclusive of the land, or the amount shown for depreciation of the improvement in the latest required federal income tax return, whichever is lower. Admin. Code §25-302(v)(3).

The Landmarks Law defines the "test year" to be "(1) the most recent full calendar year, or (2) the owner's most recent fiscal year, or (3) any twelve consecutive months ending not more than ninety days prior to the filing [of the request for hardship relief]." Admin. Code §25-302(v)(3)(b).

The Landmarks Law defines, with exceptions that are not applicable to this application, "valuation" as being "the current assessed valuation established by the city, which is in effect at the time of the filing" of the hardship request. Admin. Code §25-302(v)(2).

Under the hardship test, the applicant must demonstrate that the net annual return is less than six percent of the assessed value of the property, as those terms are defined above. To use this test the Commission must make findings concerning the overall income generated by the property, here rents,

other miscellaneous income reasonably derived from the operation of the property, and the value of other assets, such as unused development rights, and various costs incurred in operating the property. The Commission then computes whether the sum left over after subtracting the costs from the income, and considering the value of other assets, is less than six percent of the assessed value of the property.

The Applicant has the burden of “establish[ing] to the satisfaction of the commission” that a hardship exists. Admin. Code §25-309 (a)(1).

In this case, because the Owner wanted to demolish the Subject Buildings it intentionally left apartments vacant. As noted earlier, at the time of designation in November 2006 there were 53 vacant apartments. The Owner continued its policy of not re-renting apartments after designation. At the time the hardship was filed in October of 2010, 107 of 190 apartments in the Subject Buildings were vacant. There are currently 110 vacant apartments. In order to estimate what income the Subject Buildings could generate if operated in a reasonably efficient and prudent manner, the Applicant provided different development scenarios to estimate how much it would cost to renovate vacant apartments and how much renovated apartments could rent for.

### **Summary of the Owner’s Arguments**

#### **Renovation and redevelopment scenarios**

The Owner has submitted four different development scenarios to determine rental income for calendar year 2009, the Test Year.<sup>5</sup> The first, the “Base Building and Apartment” scenario, includes renovations to the base building (mechanical, electrical, plumbing, work on common areas, and façade work) as well as renovation of vacant apartments to a moderate level. Cushman projects this scenario will yield an average rent of \$40 per leasable square foot for vacant apartments.<sup>6</sup> C&W Feb. 5, 2009 Report, at 29. Second, the “Apartments Only” scenario, involves the same level of apartment renovations as the Base Building and Apartments scenario, but without improvements to the base building. Cushman projects this scenario will generate rents of \$35 per leasable square foot.<sup>7</sup> Id. at 36. The rent projections in the first two scenarios were derived from Cushman’s analysis of rents in the Other Buildings, and four nearby buildings Cushman deemed comparable. See C&W February 5, 2009 Report, at 26-29.

Third, the “Minimal Habitability” scenario, involves no renovations to the base building and apartment renovations are sufficient to cure fire and safety code issues. The level of renovation is less than the level in the Apartments Only scenario but still substantial. For example, bathrooms and kitchens would get new appliances. ProjectConsult March 23, 2011. Cushman projects this scenario would generate rents of only \$20 per leasable square foot. C&W May 2010 Report, at 23. To support this conclusion Cushman compared the renovated units to NYCHA units. C&W May 1, 2010 Report at 21-24. As further support, Cushman argued that “the average monthly rent for approximately one-third of

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<sup>5</sup> The Applicant has denoted 2009 as the Test Year as the “most recent calendar year.” See Admin. Code §25-302(v)(3)(b). The Commission notes that the Applicant did the first economic feasibility study in February 2009 and a second in May 2010 before filing the application in October 2010.

<sup>6</sup> Forty dollars a square foot equates to the following monthly rents: \$1177 (studio), \$1247 (one bedroom), and \$1313 (two bedroom). Selver, Feb. 20, 2013, Answer to Question 17(a) at p. 13.

<sup>7</sup> Cushman derived the \$35 per square foot projection by discounting the \$40 per square foot estimate by 12.5% “to reflect the inferior conditions without the capital improvements [to the base building].” C&W Feb. 5, 2009 Report at 36.

the 97 vacant units at the time they were voluntarily surrendered was \$617, indicating that they were not considered attractive enough for continued occupancy at even that rent level.” C&W July 1, 2011 at 2. Fourth, and finally, the Owner considered an “Elevator” scenario, which involved putting elevators into the Subject Buildings. Cushman concluded this was infeasible and not financeable with outside financing. C&W October 12, 2012 Report at 19. In the case of the Base Building and Apartments, Apartments Only, and Minimum Habitability schemes, the Owner submitted additional analyses based on different methodologies and new, higher cost estimates.<sup>8</sup>

The Owner submitted additional information in support of its projection of a \$40 per square foot rent for the Base Building and Apartments scenario. It provided an adjustment grid to explain the discounts it applied to the rents at the four larger properties it used as comparables in the February 2009 Report. C&W October 12, 2012 Report at 8-10. It provided additional information on 14 apartments in walkup, non-doorman buildings; nine apartments in elevatored non-doorman buildings, and 115 apartments in elevatored doorman buildings.<sup>9</sup> Id. at 10-14. For the latter two categories, Cushman discounted the rents by 15 and 25 percent respectively, to take into account the elevators and doormen. Id. at 11, 14.

According to material submitted by the Owner, none of these scenarios generated a reasonable return as defined by the Landmarks Law.

#### Vacancy Rate and Collection (Credit) Loss

In connection with its analyses, the Owner has argued that a ten percent vacancy and collection loss should be deducted from projected rental income. Specifically, Cushman has proposed a 5.0 to 7.5 percent vacancy rate and a 2.5 to 5.0 credit loss. The Owner acknowledges their projected vacancy rate is substantially higher than the average in this area of the city, but argues that the Subject Buildings are not average in terms of their apartment size, layout and condition, and because they are six-floor walkups. C&W October 12, 2012 Report at 21. The Owner claims its experience with renting apartments in the Other Buildings supports its argument. According to the Owner, the Other Buildings have experienced vacancy rates between 20-25% in recent years. This high vacancy rate is allegedly due to the substandard quality of the apartments and the buildings when compared with newer construction, and the fact that local institutional employers have constructed their own housing in recent years, thus reducing the pool of potential renters. Cushman, May 1, 2010 Report at 26; Cushman October 12, 2012 Report at 21; Stahl, October 10, 2012 at 3-6. They also argue that the buildings experience above high turnover because tenants move out as soon as they can due to the substandard size, layout, etc. Stahl, October 11, 2012 at 4-5.

The Owner also argues that the official vacancy statistics undercount actual vacancies. Stahl, October 10, 2013 at 6.

Cushman argues for a 2.5-5 percent credit loss because “[r]ent stabilized tenants falling in arrears are not immediately evicted. Slow or nonpayment of rents impacts budgeted and actual receipts and must be considered as part of a credit loss.” Cushman, October 12, 2012 Report at 21; see also Stahl, October 11, 2012 at 4; Stahl, October 10, 2013 at 7.

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<sup>8</sup> Stahl submitted alternate financial analyses for some of these scenarios. Compare C&W February 5, 2009 Report with C&W October 12, 2012 Report; C&W May 1, 2010 with C&W July 1, 2011.

<sup>9</sup> Cushman’s charts include a column on “condition,” but Cushman states that it confirmed only “actual rental and square footage information.” Id. at 10.

### Additional income.

The Owner claims there is no opportunity for additional income from the Subject Property. It has stated, without submitting supporting documentation, that the full basements of the Subject Buildings could not economically be renovated for storage facilities. It has refused to include approximately \$12,500 in income from laundry facilities situated in the Other Buildings that its accountants previously assigned to the Subject Buildings, stating that this is not an as-of-right amenity and therefore should not be included in the analysis. Stahl, February 6, 2014 at 2. It has not looked at whether additional income could be derived from leasing the roofs to cell phone companies.

Finally, the Owner has never tried to sell its development rights and stated that there is no site to which it could sell its development rights pursuant to section 74-79 of the Zoning Resolution. This provision, only available to landmarked properties, permits an Owner to transfer excess development rights across a street or intersection. Stahl owns the building directly across East 65<sup>th</sup> Street at 1213 York Avenue. Stahl has stated this is not a development site because the "building is occupied by rent regulated tenants, which makes a transfer of floor area to that site speculative at best." Selver, February 20, 2013 Answer to Question 37. Stahl also discounts the utility of a development rights transfer because the development potential of the site could only be increased by 20-percent (approximately 40,000 square feet of floor area), and the "zoning lot occupied by the Subject Buildings has significantly more than 40,000 square feet of unused floor area." Id. Stahl also dismisses transferring development rights across York Avenue to Rockefeller University because the University already has unused development rights. Stahl, February 20, 2013, Answer to Question 38. As a result, Stahl has assigned no value to these development rights in any of its economic analyses.

### Assessed Value After Renovation

To determine if the Improvement Parcel can earn a reasonable return, the Commission must project the post-renovation assessed value. The Applicant has argued that the Commission should utilize a "cost approach" to make this determination. It argues for the cost approach, even though it generates a high assessed value and, therefore higher real estate taxes, because it allows the Commission to explicitly factor in some of the actual costs of renovation. For this reason it is the fairest method for projecting assessed value. Selver, October 12, 2012 at 7; Selver, May 7, 2014 at 2-3.

### The Applicant's Conclusions

Based on the arguments above, the Applicant argues none of the proposed renovation schemes enable lot 22, the Subject Properties, to make a reasonable return as defined by section 25-309 of the Landmarks Law.

### Commission's Findings

#### I. The Relevant Improvement Parcel for the Hardship Application is all of the Lots on Block 1459.

As a threshold matter, the Commission finds that the improvement parcel for this particular hardship application should be all of the lots on Block 1459 (i.e., 1, 10, 30 and 22), and not just lot 22 as put forward by the Applicant. Since Stahl has not provided information on the condition or cost to renovate vacant apartments in the Other Buildings, and refused to provide relevant information about the operation of the buildings on lots 1, 10 and 30, on the basis that such information is not relevant to the hardship application, see Selver, November 18, 2013 at 2, the Commission finds that Stahl has failed

to carry its burden to demonstrate that the improvement parcel containing the Subject Buildings cannot earn a reasonable return.<sup>10</sup>

The Landmarks Law defines “improvement parcel” for purposes of the hardship application as the “unit of real property which (1) includes a physical betterment constituting an improvement and the land embracing the site thereof, and (2) is treated as a single entity for purposes of levying real estate taxes.” Landmarks Law §25-302(j). The Commission notes that the Complex takes up all of Manhattan tax block 1459, that block 1459 is subdivided into four lots (lots 1, 10, 22 and 30), that the Subject Buildings are on tax lot 22. The Commission notes that this is the historic condition of block 1459.

The Commission further notes that the Subject Buildings were built as part of the larger complex; that the buildings were stylistically, and remain physically, related to the rest of the buildings on the block in terms of height, massing and general layout; that the Subject Buildings and all of the Other Buildings in the Complex share common boilers; that maintenance personnel are shared among all the buildings on block 1459; that the Owner operates one leasing office for all of the buildings in the Complex, that laundry facilities located in buildings in the Complex are available to tenants from other buildings, and that income from laundry facilities is assigned to buildings throughout the complex.

Finally, the Commission believes that Stahl has managed all of the Other Buildings on lot 1459 in a manner designed to facilitate the desire to demolish the Subject Buildings and redevelop the site. The Commission notes that the vacancy rate for the Upper East Side has averaged approximately 1.5 percent over the five year period from 2007-11, yet Stahl maintains that the vacancy rate in the Other Buildings exceeds 20 percent during the relevant time period. Notwithstanding this excessively high vacancy rate, Stahl has done nothing to increase or improve its efforts to rent apartments in the Other Buildings. The record demonstrates that Stahl maintains an on-site rental office in the Complex. However, the record shows that the rental office does not advertise vacancies, that it does not keep records of how many people have inquired nor does it maintain a record of applications for apartments. The Record also demonstrates that Stahl has not sought to rent apartments through other media or use other brokers.<sup>11</sup>

Stahl’s management of the Other Buildings is imprudent and irrational to the extent that it has maintained excessive vacancies at the Other Buildings. The Commission finds that the only rational interpretation for the Owner’s behavior is that it has managed all of the buildings on block 1459 in light of its desire to demolish the Subject Buildings. To this end, Stahl has stated that it intends to offer all existing tenants in the Subject Buildings comparable accommodations in the Other Buildings. In order to do this, the Commission believes that Stahl has not made reasonable and prudent efforts to rent apartments in the Other Buildings, which is why the vacancy rate in these buildings has been excessively higher than the average for the area. All of this supports the Commission’s belief that the Complex is managed as a single economic unit.

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<sup>10</sup> The letter states that the “Stahl Organization respectfully declines to provide the Commission with copies of RPIEs for the other FAE buildings for the years 2006 through 2008. These filings concern neither the property that is the subject of this application nor the applicable “test year.” Therefore, we do not believe they have any conceivable relevance to this proceeding.” Id.

<sup>11</sup> Stahl has provided inconsistent information related to the practices at its rental office. In response to a question from the Commission about how many inquiries and applications to rent apartments in the City & Suburban Complex Stahl has received over the past 10 years, Stahl stated that it “does not maintain records of the number of people who have either inquired about renting, or applied to rent, an apartment in the Subject Buildings or the Other Buildings.” February 20, 2013 Response to Questions, p. 30. However, Stahl subsequently contradicted this assertion in its November 12, 2013 submission, where it asserted that at the City & Suburban Complex “we receive approximately 6 on-site inquiries for each one apartment leased.”

In further support for this conclusion, the Commission notes that the Applicant has filed consolidated filings for all of the lots on block 1459 for real estate tax purposes for at least the tax years 2007-2012.<sup>12</sup> In making such a filing the Applicant files a form TC 166, which notifies the Department of Finance that “two or more non-condo tax lots, operated as an economic unit or otherwise related for purposes of valuation, should be reviewed together as a consolidated unit.”

For all of these reasons, the Commission finds that the improvement parcel for purposes of this hardship application should be Manhattan Tax Block 1459 in its entirety, and that Stahl has failed to demonstrate that the improvement parcel is incapable of earning a reasonable return.

Notwithstanding this finding, the Commission has analyzed the Owner’s hardship application solely with respect to the two buildings on lot 22.

II. Only the cost of renovation of apartments vacant at the time of designation should be considered in the hardship calculation for depreciation.

The Commission notes that starting sometime before the Commission redesignated lot 22 in November 2006, to make it once again part of the designation of the First Avenue Estate landmark, Stahl had embarked on a plan to vacate the Subject Buildings, demolish them and redevelop the site. In furtherance of this plan, Stahl began to leave apartments vacant after tenants left. While Stahl has testified that this began “in or about the late 1990s,” see Selver, February 20, 2013 Response to Question 1, according to information provided by Stahl the earliest vacancy at the Subject Buildings dates from 2000, and most of the vacancies begin in 2003 and 2004. See Selver, February 20, 2013, at Exhibit B. At the time of designation there were 53 vacant apartments. See, Stahl 2/20/13, Answer to Question 2. Stahl then challenged the designation by an Article 78 proceeding, which it lost. Stahl’s appeal of this decision was denied, as was its motion for leave to appeal to the Court of Appeals. Throughout the time it was challenging the redesignation Stahl continued its policy of not renting vacated apartments. As a result, at the time Stahl filed the hardship application there were 107 vacant apartments in the Subject Buildings. There are currently 110 vacancies.

The Commission finds that the decision by Stahl to continue its policy of not renting apartments vacated after redesignation was a conscious business decision and a voluntary assumption of risk, and that any costs associated with renovating the 44 apartments vacated after redesignation are a self-imposed hardship. Therefore, the Commission finds that only the renovation costs for 53 apartments should be included in the depreciation allowance.

The Commission notes that renovation costs will differ under the various scenarios analyzed in this proceeding, depending on the level of renovation. Appendix B.1 and Appendix C.1 calculate the depreciation allowance for different renovation scenarios.

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<sup>12</sup> The consolidated filings also included 1213 York Avenue, the adjacent full block building across East 65<sup>th</sup> Street from the Subject Buildings, and also owned by Stahl.

III. Moderately renovated apartments in the Apartments Only would likely generate rents of at least \$35 - \$40 per leasable square foot.

To determine the potential income the Commission must look at what rental income could reasonably be generated by the Subject Buildings from the 93 occupied apartments and renovating 97 vacant apartments<sup>13</sup>, as well as income from other sources.

For purposes of the hardship analysis, the Commission considered the Apartments Only renovation scenario, whereby the 97 vacant apartments were renovated to a moderate level, with no improvements to the base building. Cushman projected that renovated apartments in the Apartments Only scenario would result in rents of \$35 per leasable square foot, which it arrived at after discounting by 12.5 percent its projected \$40 per square leasable foot for the Base Building and Apartments scenario. This Cushman applied this discount "to reflect the inferior conditions without the capital improvements [to the base building]." C&W Feb. 5, 2009 Report at 36. After reviewing the record, the Commission concurs with this conclusion, but not for the reasons stated, and finds that moderately renovated apartments could command rents of at least \$35 per square leasable foot.<sup>14</sup>

However, the Commission finds that the Applicant has not demonstrated that the Apartments Only scenario could not generate higher rents. Indeed, the Commission finds that the record supports the conclusion that this scenario could generate rents of at least \$40 per leasable square foot, if not higher.<sup>15</sup>

In reaching this conclusion, the Commission notes that the Subject Buildings are part of the larger Complex, built by the same Owner, which is comprised of very similar, six story walkup buildings, with small apartments, which are also landmarked and owned and operated by the Stahl. The Commission believes that rents obtained for apartments in the Other Buildings during the relevant time

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<sup>13</sup> Although there were 107 vacant apartments at the time the hardship application was filed in October 2010, the last economic feasibility study done before filing, from May 2010, looked at the income from renovating 97 vacant apartments and also included income from the occupied apartments. The Applicant has continued to assume renovation of 97 apartments in subsequent analyses. See C&W July 1, 2011 Report; C&W October 12, 2012 Report.

<sup>14</sup> The issue of how high rents could legally go after renovation became an issue because of Cushman's assumption and statement that vacant apartments were "deregulated." After questioning by LPC staff, Stahl corrected the record and noted that rent regulations would continue to apply and restricted increases in rent. See Stahl, 10/11/12 at 1-3. Stahl also discussed the distinction between legal and preferential rents, and provided information on how rents would increase in connection with the Base Building and Apartments scenario. See id. at Exhibit B. Stahl did not provide any equivalent information for the Apartments Only or the Minimum Habitability scenarios. However, the Commission notes that even with no major capital improvements to the Subject Buildings common areas and exteriors, vacant apartments would be subject to a 16% vacancy increase as well as applicable Individual Apartment Increases ("IAI") for qualifying expenses and that these IAIs would be passed on to tenants in a similar fashion as MCIs, thus raising the legal rents. The Commission believes that renovation costs for a level 4 would qualify and, at a minimum, the bathroom and kitchen upgrades in levels 2-3 renovations.

In addition, as set forth in Exhibit B to Stahl's October 11, 2012 letter, the current, average legal rent for vacant apartments in the Subject Buildings is \$1,009.83. With the 16% vacancy increase the average legal rent per apartment would equal \$1,171.40 (\$1,009.83 + \$161.57), which equates to an average legal rent of \$37.87 per square foot (\$1,171 x 12 / 371), not including allowable IAI increases. According to HR&A, the average rent if IAI increases were included would be \$1,432. HR&A June 11, 2013 at 7.

<sup>15</sup> The record shows that the Other Buildings have not generally received the building wide upgrades contemplated in the Base Building and Apartments scenario, and that the conditions in the Other Buildings are more similar to the Apartments Only scenario. See Appendix A. Thus, the Commission finds that the Apartments Only scenario could likely generate rents similar to the rents received in the Other Buildings.

period provide a good basis from which to estimate potential rents from moderately renovated apartments in the Subject Buildings.

The Commission notes that the Applicant agrees with this assumption. The Applicant has stated that the apartments in the Other Buildings are the best comparable apartments to the apartments in the Subject Buildings. P. Selver, Jan. 24, 2012 Public Hearing at 56 (“best comparables” are apartments in other buildings in complex); Cushman June 11, 2013 Public Hearing at 45 (rents at other apartments in complex are the “most valid rent comparables” to Subject Property). However, the Applicant has also argued that apartments in the Other Buildings are easier to rent, and can rent for higher rents, because they are bigger and superior in terms of layouts and condition and are more desirable because they are marginally closer to subways and commercial avenues. See Stahl October 11, 2012, at 5, 11; Stahl November 12, 2013, at 6-7; see also February 20, 2013 Response to Question 15; C&W February 5, 2009 Report at 26. For the reasons set forth in Appendix A, the Commission finds that apartments in the Other Buildings are comparable, notwithstanding some differences in size, layout, condition and location and that rents, and price per square leasable foot, in the Other Buildings are the best indicator of what renovated apartments in the Subject Building could rent for.

Based on information provided by the Applicant, comparable apartments in the Other Buildings in the Complex were rented for an average of more than \$1200 per month in 2009, 2010 and 2011. Specifically, Cushman provided information on recent rents for 18 apartments (393 square feet on average) in the Other Buildings in the February 5, 2009 Report, p. 27, which rented for an average of \$1442 per month, or \$43.46 per leasable square foot. A year later Cushman provided follow up information on 12 of these apartments (averaging 390 leasable feet), showing that they rented for an average \$1446.10/month, or \$44.48 per square leasable foot.<sup>16</sup> C&W May 1, 2010 Report at 22. It should be noted that the rent in eleven of these apartments had increased during the year, with one remaining the same.

Subsequently, in the October 11, 2012 submission, at Exhibit A, Stahl provided a list of 21 apartments rented in 2009 in the Other Buildings. (Three of these were included in the C&W February 5, 2009 Report.) These apartments rented for an average of \$1247 a month. (Stahl did not provide square footage.) Significantly, however, nine of these 21 apartments had rent stabilized or controlled rent of \$1200 or less a month and, therefore could not have been rented for more than the legal rent, and therefore depress the average. (Six of these had rents below \$1000 a month.) None of the nine apartments required a preferential rent – a rent lower than the legal rent. According to this data, a preferential rent was required only when the legal rent was higher than \$1377 a month, and even when necessary, in no instance was the preferential rent less than \$1300 a month.<sup>17</sup> All of this suggests that these nine apartments could have rented for more than their current legal rents, which means the average for the 21 apartments was artificially low. For example, if one assumed that these nine

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<sup>16</sup> According to the Applicant, the highest reported rent per square foot in the May 2010 report mistakenly listed the legal rent and not the actual preferential rent that was obtained. Stahl, November 12, 2013 at 4. Stahl did not, however, provide any information about the rent actually received. Notwithstanding this information, according to Stahl, the average rent reported by Cushman in the May 2010 Report was \$42.99 for non-MSK apartments, as opposed to \$44.48, still significantly above \$40 per square foot.

<sup>17</sup> Due to Stahl’s limited efforts to rent apartments, as discussed below, it is unclear whether no or fewer preferential rents would have been required if Stahl had employed reasonably prudent and efficient measures to rent the apartments for their legal rent.



apartments could have rented for the minimum preferential rent of \$1300, rent regulations aside, the average monthly rent for the 21 apartments in 2009 would have increased from \$1247 to \$1389.<sup>18</sup>

The Commission also notes that price per square foot varies widely in apartments in the Other Buildings rented during 2009-2011, based on information supplied by Stahl.<sup>19</sup> The price per leasable square foot for apartments less than 400 square feet in size varies from a high of \$55 a square leasable foot to a low of \$27.9. It even varied widely between apartments of the same size. For example, four apartments had 303 leasable square feet, and they rented for a low of \$39.60 per leasable square foot to a high of \$55.12. Similarly, the three 377 square foot apartments rented for a low of \$29.90 per leasable square foot to a high of \$50.32. Finally, the lowest price per leasable square foot for a preferential rent was \$27 (for a 488 square foot apartment on the first floor), and the highest preferential rent was \$47.50 (for a 303 square foot apartment on the third floor).

The differing price per square foot for apartments in the Other Buildings most likely reflects specific conditions in particular apartments. In this respect, the Commission notes that the apartments in the Subject Buildings will have been recently renovated and that approximately 85 percent will be renovated to a level 2 or 3, and that approximately 60 percent will be renovated to a level 3, with new kitchens and baths and 60 percent of the ceiling, wall and floors renovated. This level of renovation will likely command a price per square foot that corresponds to the higher square foot prices received by Stahl. Stahl generally concedes that apartment renovations in the Other Buildings are comparable to the level of renovation under some of the renovation schemes analyzed for the hardship application. See Stahl, February 12, 2014 at 2.

In addition, the size of the apartments appears to be no impediment to achieving high rents per leasable square foot. Eleven of the 18 apartments cited by Cushman in the February 5, 2009 Report were less than 385 square feet. Yet in only three cases did these apartments rent for less than \$40 a square foot, and one of these apartments was renting for its legal rent and couldn't go higher. Of the remaining eight apartments, two rented for more than \$50 a square foot; two rented for more than \$45 a square foot, and three rented for more than \$43 a square foot. Similarly in Cushman's May 1, 2010 Report, 7 out of 12 apartments cited were less than 373 leasable square feet. Of this group only two rented for less than \$43 per square foot (one rented for \$40.80 and the other for \$34.06), and one rented for more than \$50 per square foot. *Id.* at 22. This conclusion is also supported by other data supplied by Cushman, which found that studios averaging 367 square feet in non-doorman walkup buildings rented for an average of \$45.76 per square foot. See C&W October 12, 2012 Report, at 10. It should be noted that rents for comparables do not include electricity and may also require a broker's fee, whereas rents in the Subject Buildings and Other Buildings include electricity and there is no

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<sup>18</sup> This trend continues in 2010 and 2011. According to Exhibit A of Stahl's October 11, 2012 submission, it rented 32 apartments in the Other Buildings in 2010. No apartment with a legal rent of less than \$1380 required preferential rent, and the average preferential rent was \$1333. Similarly, in 2011 61 apartments in the Other Buildings were rented. No apartment with a legal rent of less than \$1212 required preferential rent, and the average preferential rent was \$1225.

<sup>19</sup> The Commission estimated leasable square footage by consolidating apartment size information provided by Stahl in the February 6, 2014 letter with the 2009-2011 leasing data provided by Stahl in Exhibit A to the October 11, 2012 submission.

broker's fee. Consequently, lessees in the comparable apartments are actually paying even more than \$45.76 per square foot.<sup>20</sup>

After considering all of the testimony, and taking into account the somewhat smaller size of the apartments and bedrooms in the Subject Buildings compared to the apartments in the Other Buildings, the Commission concludes that moderately renovated apartments could command rents of at least \$35 per leasable square foot, and could likely generate rents of at least \$40 per square foot, if not more.

Thus, at \$35 per leasable square foot, 97 moderately renovated apartments would generate approximately \$1,259,545 in gross rental income ( $\$35 \times 371 \times 97$ ). The gross income from renting the renovated apartments at \$40 per square leasable foot would generate \$1,437,765.<sup>21</sup> In addition, the 93 occupied apartments had a gross rent roll of \$969,495.<sup>22</sup> Thus, altogether, the gross rental income in the 2009 test year would be \$2,229,040 (@\$35) or \$2,407,260 (@\$40), before subtracting an amount for vacancy and collection loss.

#### IV. Apartments renovated under the Minimal Habitability scenario would likely result in vacant apartments renting for \$28 per square foot.

In addition to the Apartments Only scenario, the Commission considered the rental income from the Minimal Habitability scenario. As discussed above, this scenario involved apartment renovations limited to correcting fire and safety issues and making the apartments habitable. Cushman estimated that these apartments would command rents no higher than \$20 per square leasable foot, or an average of \$600 per apartment. The Commission finds there is no basis for this conclusion.

First, the Commission notes that the scope of work for this scheme is similar to, but not as extensive as, the scope of work in the Apartments Only scenario. A level 2 and 3 renovation, for example, includes new kitchen appliances, new kitchen cabinets and sink; new toilet fixtures, accessories and cabinets; patching of walls, ceilings and floors; new entry and interior doors; and painting. See ProjectConsult, March 23, 2011 Report.

Second, the Commission notes that the average rent for occupied apartments in the Subject Buildings as of 2010 was \$869/month, or slightly more than \$28 per square foot, and these apartments have not been renovated or upgraded in more than a decade. Third, the Subject Buildings are in a very desirable neighborhood, close to many institutional employers, with good amenities. Fourth, the overall rent is low and includes electricity. Fifth, the Commission notes that the Applicant has cited to no other apartment in the area with such a low rent, other than apartments in the Complex.

Sixth, Cushman has argued that as one-third of the vacant apartments had rented for approximately \$617 a month at the time they were vacated, this indicated that "they were not considered attractive enough for continued occupancy at even that rent level." C&W July 1, 2011 at p.2. Not only is this statement not rational, tenants choose to leave for a host of reasons, but it ignores the

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<sup>20</sup> According to Cushman, electricity is not normally included in the rent a tenant pays. See C&W February 2009 Report, at 25. Yet, Cushman did not explicitly take this fact into account in its analyses of rents from comparable buildings.

<sup>21</sup> See C&W October 12, 2012 Report at 17. Note that this is actually slightly less than \$40 ( $\$40 \times 371 \times 97 = \$1,439,480$ ).

<sup>22</sup> See Cushman May 1, 2010 Report and October 12, 2012 Report. Note, this projection is now 4 years old and, therefore, does not include any yearly increases allowed under the leases or by rent regulations.

fact that Stahl was not trying to rerent them. Since Stahl wasn't putting the apartments back on the market Cushman cannot make any statement about whether or not they would have been rented at \$617 or more. Indeed, the fact that Stahl would have to have a conscious policy of not rerenting vacant apartments suggests the opposite: that they would have been rerented, thereby thwarting Stahl's goal of vacating the building.

Finally, the Commission notes that the average legal rent for vacant apartments in the Subject Buildings is approximately \$1010 a month, including the former MSK apartments, and that according to the Applicant no apartment in the entire Complex has required a preferential rent if the legal rent was above \$1200 a month. All of this suggests that even minimally renovated apartments could rent for substantially more than projected by the applicant.

Therefore, in the absence of any compelling evidence to the contrary, the Commission finds that it is likely that vacant apartments renovated to a minimal habitability level could rent for at least \$869 a month, or \$28 per square leasable foot, which is the average current rent for occupied apartments in the Subject Buildings. Under this scenario, the gross rent roll would be \$1,981,011 (\$1,011,516 for the 97 vacant apartments, and \$969,495 for occupied apartments), before subtracting for vacancy and collection loss.

#### V. Vacancy Rate and Collection Loss

In determining effective gross income, the Commission finds that it is reasonable to subtract from the gross rental income a reasonable allowance for vacancy and collection loss.<sup>23</sup> Cushman has projected a vacancy and collection loss rate of 10 percent. HR&A projected a 5 percent vacancy and collection loss factor. For the reasons discussed below, the Commission finds that a 5 percent vacancy and collection loss factor should be applied in this hardship application.

The Commission notes that the Subject Buildings and the Complex are located in the Upper East Side of Manhattan, a highly desirable residential neighborhood.<sup>24</sup> All of the apartments are regulated by rent regulations. According to City-Habitat data cited by HR&A, the average vacancy rate for the Upper East Side averaged 1.5 percent between 2007 and 2011, with the highest rate being 2.38 percent in 2009. HR&A January 24, 2012 Report at 6.<sup>25</sup> Moreover, approximately "two-thirds of vacancies in pre-1947 rent stabilized buildings are re-rented in less than three months, and only 7% of these vacancies persist for longer than a year." HR&A June 11, 2013 at 2. HR&A found that vacancy rates tend to "be even lower [than the average on a city-wide or borough basis] in rent stabilized apartments." *Id.* In addition, The New York City Rent Guidelines Board reports that vacancy and credit loss for stabilized buildings, such as the Subject Buildings, reached a high of 4.92% in 2009.<sup>26</sup> HR&A also testified that a

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<sup>23</sup> The Commission notes that it did not include a vacancy and collection loss factor in its 1988 KISKA decision, which was the last economic hardship application decided by the Commission. Nevertheless, it finds that in this instance, given the large number of apartments in the Subject Buildings, a reasonable vacancy and collection loss factor should be included in calculating effective gross income.

<sup>24</sup> Cushman, however, considers the area "average" because of its distance from subways and the presence of area institutions "interrupt the retail landscape, requiring residents to traverse to First and Second Avenues for some basic neighborhood services." C&W February 5, 2009 Report at 12.

<sup>25</sup> The vacancy rate was .89% in 2007; 1.48% in 2008; 2.38% in 2009; 1.7% in 2010; and 1.2% for the first six months of 2011. HR&A January 24, 2012 Report at 6.

<sup>26</sup> NYC Rent Guidelines Board, Housing NYC: Rents, Markets & Trends, 2011, p. 47.

sixth floor was not more likely than a fifth or fourth floor apartment to experience prolonged vacancy. Id at 2-3.

In contrast, Stahl has testified that the Other Buildings have had a vacancy rate that exceeded 20 percent in recent years. Stahl, February 20, 2013, Answer to Question 4. It has also stated that it is not warehousing apartments, see Selver, February 20, 2013, Answer to Question 4, at 3, and is actively engaged in trying to rent them. Stahl, February 20, 2013, Answer to Question 46(a); Stahl, October 11, 2013, at 11. Finally, the Applicant argues that the Subject Buildings are not “average” due to their being 6 story walkups and the small size of the apartments and lack of amenities. See Cushman October 11, 2012 Report at 21; Cushman, October 10, 2013 Report at 7.

Cushman has projected a vacancy and collection loss rate of 10 percent, but the Commission finds this to be anomalous, excessive and unsupported by the record. The primary basis for this estimate is Stahl’s testimony that the Other Buildings have a vacancy rate that is higher than 20 percent. Stahl argues that the vacancy rate reflects the fact that the apartments are undesirable due to their size, configuration, lack of elevators, and because they do not have many of the amenities of more modern buildings. Stahl also argues that many of the nearby cultural and institutional employers have constructed their own subsidized apartments in recent years, thereby reducing the pool of potential renters. Stahl, October 22, 2012 at 4; Stahl, October 10, 2013 at 6.

The Commission notes, however, that having a lot of vacancies in the Other Buildings potentially facilitates Stahl’s plans and desires to develop the site of the Subject Buildings. Stahl has stated that if it were allowed to demolish the Subject Buildings that it would offer equivalent apartments in the Other Buildings to the rent stabilized tenants in the Subject Buildings. Since offering relocation assistance to rent stabilized tenants is a part of the process for demolishing a regulated building (leaving aside the landmarks issues), having enough vacancies in the Other Buildings to absorb all of the remaining tenants in the Subject Buildings will significantly assist the Owner in its redevelopment plans.

The Commission finds that if this vacancy rate is not the result of intentional conduct by the Owner, then it reflects unreasonable and substandard management by Stahl. The Commission notes that the Owner has not increased its efforts to rent apartments or explored other avenues for renting apartments, notwithstanding the extremely high and unusual vacancy rates. The only efforts Stahl makes to rent apartments in the Other Buildings is the onsite rental office and listing the them with the property manager Charles H. Greenthal. Stahl states that this is consistent with its practices at the other properties it owns. Stahl, November 12, 2013, at 3. The Owner has not advertised apartments in other media (e.g., social media or newspapers) or listed it with multiple brokers. The Commission found that the on-line broker, Greenthal merely lists the phone number of the onsite rental office; it does not provide floor plans, virtual tours, or other information on apartments in the Other Buildings, nor does it say whether there are any vacancies.

The Commission also notes that Stahl does “not maintain records of the number of people who have either inquired about renting, or applied to rent, an apartment in the Subject Buildings or the Other Buildings.” Selver, February 20, 2013 Response to Question 41(a), at 30.<sup>27</sup>

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<sup>27</sup> Although Stahl doesn’t keep records about who has applied or inquired about apartments, it states the “main reasons” people don’t rent apartments at the Other Buildings are: “too small, cannot walk up several flights of stairs, not in price range, failed credit check, and last but not least, people who either never came back for a second visit and/or never returned calls from the on-site leasing agent.” Stahl October 10, 2013 at 11. It also claims that it “receive[s] approximately 6 on-site inquiries for each one apartment leased.” Stahl, November 12, 2013 at 3.

Stahl attempts to buttress the argument for the 10 percent figure by arguing that apartment turnover, as opposed to efforts to lease up apartments, is the underlying cause for the 20 percent vacancy figure in the Other Buildings. Stahl, October 11, 2012 at 3. However, according to statistics provided by Stahl, between 2009 – 2011 the apartment turnover rate in the Other Buildings averaged less than 5 percent. See Stahl, October 11, 2012, at 4. This is consistent with the turnover rate at the Subject Buildings. According to Stahl, it began the policy of not re-renting vacated apartments in the late 1990s. By the end of 2012 there were 110 vacancies. Assuming the late 1990s means 1998, it took 14 years to reach 110 vacancies, which is an average of 7.8 apartments (3.9 percent of the apartments in the Subject Buildings) becoming vacant each year. Assuming it would take an average of 4 months to refurbish and make an apartment ready for re-leasing,<sup>28</sup> that equates to approximately 31 months that the apartments were vacant, which is an actual vacancy rate of only 1.36%.<sup>29</sup>

The Commission finds that, faced with such a high vacancy rate when compared to the average for the area as a whole, a prudent Owner would have engaged in other efforts to rent apartments and reduce the vacancies, and that the failure by the Owner to change its general management approach and intensify and diversify efforts to rent apartments, or by increasing their desirability by providing on-site storage, is unreasonable and imprudent. That the Owner has not deviated from its practices notwithstanding that “[v]acancy throughout our portfolio, except for [the City & Suburban Complex] is minimal, and none of these other properties are advertised through social media, internet, or newspapers,” Stahl, November 12, 2013 at 3, underscores the unreasonable nature of its actions.<sup>30</sup>

In addition, the Commission finds that a reasonable collection loss factor should be included. Stahl has noted that loss for uncollected rent averaged about 1 percent from 2000-2010, and 1.5 percent for the past five years, net of other expenses associated with this issue. Therefore, Stahl argues that credit loss could exceed 2.5 percent. See Stahl, October 10, 2013 at 5. The Commission notes that a 2.5 percent credit loss is not inconsistent with reported average of 4.92 percent for vacancy and collection loss for 2009, as reported by the NYC Rent Guidelines Board, Housing NYC: Rents, Markets & Trends, 2011, p. 47.

In light of these facts, the Commission finds that the Applicant has not demonstrated that it should apply a vacancy and collection loss rate that is different from the average, and, therefore, finds that an overall vacancy and collection factor of 5 percent should be applied.

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<sup>28</sup> This is one more month than the average city-wide. See HR&A June 11, 2013 at 2.

<sup>29</sup> 31 of 2280 rental months per year (190 apartments x 12 months). Assuming that the policy of not re-renting began in 2000, as the record supports, it took 12 years to reach 110 vacancies. This means that 9.1 apartments became vacant each year, or 4.7 of the total number of apartments. Again, assuming 4 months to renovate and re-rent, that equals 36.4 months, or an actual vacancy rate of 1.61 percent.

<sup>30</sup> The Commission heard testimony from Jay Kosnetz, a tenant in one of the Subject Buildings for 28 years. Mr. Kosnetz testified that he pays more than \$1000/month and that no renovations had been undertaken in his apartment during that time. Mr. Kosnetz placed an advertisement with pictures in Craig's List on the Friday before the January 24, 2012 public hearing seeking \$1400 a month and testified that he “received many serious replies. That Saturday during the snowstorm, five people come to see the apartment. By nine p.m. I had a firm offer.” Transcript, January 24, 2012, pp. 131-32. The Commission notes that no actual lease resulted, but takes notice of the media used to advertise the apartment and the response.

## VI. Other Income

The Commission finds that there are other opportunities to derive income from the Subject Buildings, which could increase the gross income.

First, with respect to income from laundry facilities, the Commission notes that Stahl's accountants have previously assigned approximately \$12,000 in income to the Subject Properties in connection with income from laundry facilities in Other Buildings in the Complex. Cushman has noted that access to laundry facilities in the Other Buildings is an "amenity" of the Subject Buildings. See C&W February 5, 2009 Report at 18. Stahl has opposed allocating income from laundry in this hardship proceeding because it is not a right under the lease and it is unreasonable to require an Owner to "re-allocate income received from someone's use of its facilities to a different property in which that person lives." Stahl February 6, 2014 at 2. However, the Commission notes that Stahl has done this voluntarily prior to the hardship, and that access to a laundry facility in the Complex is an amenity to all tenants. The Commission also notes that Stahl shares certain operating expenses among all the buildings at the Complex, including the rental office, maintenance personnel, and boilers, and that these expenses are assigned to individual buildings. Stahl, May 12, 2014 at 2.<sup>31</sup> The Commission sees no reason why expenses can be allocated but not income from an amenity shared by all tenants. Therefore, the Commission finds that the past practice of allocating approximately \$12,000 in income from projected use by tenants of the laundry facilities located in the Other Buildings should be continued and this amount added to the projected income from the Subject Properties.

Second, the Commission notes that Stahl has not tried very hard to find other ways to generate income from the Subject Properties. For example, Stahl could install laundry or storage facilities, or bike storage, in the basements, or rent the roofs for cell phone antenna. Stahl's reluctance to explore these avenues is curious, given that it has argued that the Subject Buildings are undesirable in part because of their size and because "they do not have the amenities that people are looking for." Jan. 23, 2012 Public Hearing, at 18. In response to questions from the Commission about installing storage facilities in the basements, Stahl responded it wasn't economical given the "limited amount of revenue," but failed to provide any documentation. Selver, February 20, 2013, Answer to Question 10. Commissioners and staff have inspected the basements and found them to be large, clean and empty. There is also the possibility that the roofs of the Subject Buildings could be rented to cell phone companies for appropriately placed antennae.

Therefore, the Commission finds that Stahl has not provided evidence that it cannot generate additional revenue from the Subject Buildings by, for example, installing tenant storage or leasing the Subject Buildings for use by mobile phone providers.

Finally, the Commission believes that the development rights on lot 22 have a significant value that should be included in the hardship analysis in some form. Stahl assigns no present value to these development rights. For example, Stahl owns the adjacent full block site at 1213 York Avenue, which could accommodate approximately 40,000 of the Subject Properties' air rights. Stahl has stated that a transfer to 1213 York Avenue is "speculative" because of the existence of rent regulated tenants, yet the Commission notes that is exactly what Stahl undertook at the Subject Buildings when it began to warehouse apartments, and in fact seven rent controlled tenants remained in the Subject Buildings at

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<sup>31</sup> "We do not dispute that there are shared services among the buildings on Block 1459 (most staff, the renting office, several shared boilers). . . . Most major operating expenses, including labor, utilities, repairs and maintenance, and insurance, will vary depending on occupancy level, and the scope of renovations and improvements made."

the time this hardship application was filed. Stahl has also argued that 1213 York could not accommodate all of the Subject Buildings' development rights. The fact that not all of the development rights from the Subject Buildings could be transferred to 1213 York Avenue doesn't address the question of what such development rights that could be transferred would be worth. If they were worth only \$150 a square foot, they would generate approximately \$6 million, which, after deducting for transaction costs associated with the requirements of section 74-79, could underwrite some of the cost of renovation work.

The Commission also notes that Rockefeller University is across York Avenue from the Subject Buildings and development rights from the Subject Building as well as the entire Complex could potentially be transferred with a 74-79 special permit. Stahl has stated that a transfer to the University is not a viable option, as the University has excess development rights. Selver, February 20, 2013 Answer to Question 38, at 28. The Commission notes, however, that the Owner has not actually made any overtures to the University and that the University recently announced plans to expand by 160,000 square feet.<sup>32</sup> Thus, there may be the potential to sell some or all of the Subject Buildings' excess development rights.

#### VII. Reasonable Expenses of Operating the Subject Buildings After Renovation

After determining the effective gross income after renovating vacant apartments, the Commission must determine what reasonable operating costs should be subtracted in order to arrive at the net annual return. Cushman has defined these costs as: real estate taxes, insurance, salary and benefits, utilities, water and sewer, repairs and maintenance, general and administrative, legal and professional, management, depreciation, and miscellaneous.

The Commission notes that Cushman projects much higher operating expenses at the Subject Buildings after renovation under both the Base Building and Apartments and Apartments Only Scenarios when compared with the actual operating expenses at the rest of the Complex. Based on operating expense information provided by Stahl on November 18, 2013, the average operating expenses for the Other Buildings in the Complex in 2009 were \$10.26 per gross square foot ("gsf"). This expense number excludes real estate taxes. If real estate taxes and depreciation are excluded, since the Commission must calculate these separately in connection with the hardship application, the average expense cost for the Other Buildings is \$9.97/gsf in 2009.

In contrast, Cushman in the October 12, 2012 Report estimates that operating expenses at the Subject Building after the Base Building and Apartments Scenario would be \$14.20/gsf, exclusive of real estate taxes and depreciation, or more than forty percent more than the average operating expenses in the Other Buildings for the same year. For the Apartments Only Scenario, Cushman projected even higher operating expenses of \$15.70/gsf, exclusive of real estate taxes and depreciation, or approximately 57 percent more than the average operating expenses of the Other Buildings. C&W February 5, 2009 Report at 37. The Commission notes that the operating expenses for the Minimal Habitability scenario are identical to the Apartments Only scenario, with the exception of real estate taxes and depreciation. Cushman, July 1, 2011, at 3. Cushman acknowledges that its estimates for repair and maintenance are a "judgment call," Jan. 24, 2012 Public Hearing at 34, and they project higher than normal insurance costs because they assume, without discussion, that the Subject Buildings will be insured as a "stand alone asset" instead of falling under Stahl's "blanket insurance policy" that it

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<sup>32</sup> See <http://www.crainsnewyork.com/article/20140220/BLOGS03/140229997/rockefeller-university-expansion#>.

has for the rest of the buildings. Id. at 33. They also attempt to minimize the difference by noting that their estimate “falls slightly above the range” for comparables, “but is reflective of the size and nature of the development.” C&W Feb. 5, 2009 Report at 34.

The Commission finds that there is no justification for such a significant difference in operating costs between the Subject Buildings and the Other Buildings, given the similarities between the buildings in the Complex. The Commission notes that the entire Complex is operated together, with shared mechanical services, maintenance staff, and rental office. In defending its estimate, Cushman cites a number of factors, such as smaller apartment sizes compared to post-war buildings, courtyards and extensive perimeter walls, lack of insulation, age and efficiency of the mechanical plant, design of the building and lack of fireproofing. These factors may support higher operating costs when compared to more contemporary construction, but it doesn’t support such a big difference when compared to the Other Buildings, as these conditions exist at the Other Buildings in the Complex. See C&W February 5, 2009 Report at 33, 37; C&W May 1, 2010 at 28; C&W October 12, 2012 at 21.

The only difference between the condition of the Other Buildings and the Subject buildings is that Stahl alleges it has invested less in the Subject Buildings in the recent past because it wanted to demolish them. However, there is nothing in the record to quantify what that different level of investment was, or to justify how such investments would account for such a large discrepancy between similar buildings. The record is bereft of specific information about what investments were made in the Other Buildings and how that might affect operating costs. Responding to a question about common areas, Stahl testified that “some” of the Other Buildings had upgraded electrical and plumbing, and roof work, but no specifics were provided. February 20, 2012 Response to Questions, p. 19. To the extent that higher operating costs are allegedly the result of turnover and vacancies, and/or old utilities the Other Buildings have similar conditions and therefore this would not explain such a significantly higher cost per square foot for operating expenses in the Subject Buildings. In addition, lower vacancy in the Subject Buildings after renovation, compared to the alleged 20-25% vacancy in the Other Buildings, cannot account for such a large difference because, the projections for the Other Buildings must project “full operating expense as rent regulated tenants can have no diminution in service.” C&W May 1, 2010 Report at 28.<sup>33</sup>

The Commission also notes that the façade of the Subject Building was redone in 2006-07 and that more than half the apartments will be refurbished under any of the development scenarios. Thus, compared to the Other Buildings, it is difficult to justify why the expenses should be so much higher at the Subject Buildings.

Finally, the Commission notes that four of the non-doorman walkup buildings in Cushman’s analysis of operating expenses have small apartments that average less than 500 feet. The average operating expense, excluding real estate taxes and depreciation, for these buildings is \$11.13/gsf. This is 30 percent lower than the projected expenses for the Apartments Only scenario. See, Cushman October 12, 2012 Report, see pages 22-23.

Based on the record, the Commission finds that operating expenses, exclusive of real estate taxes and depreciation, for the Subject Building after the Apartments Only and Minimum Habitability work should be based on the average operating expenses for the rest of the Complex, \$9.97/gsf, but should be increased to account for the fact that the Subject Buildings may be in somewhat worse shape

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<sup>33</sup> The Commission also notes that even after investing more than \$16 million dollars in apartment and base building work, Cushman still projects operating costs that are more than forty percent higher than the average for the Other Buildings.



than the Other Buildings. The Commission, therefore, believes that it is reasonable to increase the average operating expense by 15%, to \$11.46/gsf. Multiplying \$11.46 x 84,826 gsf (the Subject Buildings' gross building area) results in operating costs, exclusive of real estate taxes and depreciation, of \$972,106.

#### VIII. Depreciation

The hardship test includes as an expense a depreciation allowance of "two per centum of the assessed value of the improvement, exclusive of the land, or the amount shown for depreciation of the improvement in the latest required federal income tax return, whichever is lower." §25-302(v)(3)(a). The assessed value of the property for the 2009/2010 tax year is \$2,533,500, of which the buildings were valued at \$733,500. Two percent of \$733,500 is \$14,670.<sup>34</sup> In addition, to account for the capital cost required to renovate the 53 apartments that were vacant at the time of designation, the Commission finds that it is reasonable to include two percent of the renovation costs in the depreciation allowance.

In October the Applicant submitted a revised cost estimate indicating apartment renovation costs of \$5,771,882 for 110 apartments. Gleeds August 27, 2012 Report at Summary 2-3. This is an average of \$52,471 per apartment, exclusive of contingency. The Commission finds these renovation costs reasonable. The Commission also finds that a 15 percent contingency is reasonable. These costs do not include soft costs. While normally soft costs are not depreciable, since the Commission allowed some soft costs to be included in the KISKA decision, it finds that some soft costs should be included in the depreciation allowance.

The Commission notes that Cushman did not include window replacements in the Apartments Only scenario. In looking at the rest of the Complex, the Commission notes that it appears that there have been few, if any, window replacements on the primary facades. Almost all of the windows appear to be the original two-over-two wood windows, and it appears few if any have been recently repainted. Thus, the Commission finds that its projection that moderately renovated apartments could be rented for at least \$40 a leasable square foot, which was based on rentals in the Other Buildings which do not appear to have new windows, would still apply without any change to windows.

Nevertheless, the Commission believes it is prudent to consider repairing and replacing windows as an additional scope of work in the Apartments Only scenario. After reviewing Gleeds' budget for window replacement in the Base Building and Apartments scenario, see Gleeds August 27, 2012 Report at Detail/Windows/1, the Commission finds that it proposes an unjustifiable scope of work. It includes enlarging all of the remaining 618 original window openings that were not already enlarged as part of Stahl's efforts to deface the building and prevent designation, and installing new aluminum tilt and turn windows that do not match the historic windows in terms of configuration, size, material or details. The proposed work also includes replacing all lintels and sills and significant repair work on the façade and interiors arising from enlarging the windows. Gleeds estimated the cost of this work to be more than

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<sup>34</sup> Stahl has included \$17,005 in its depreciation calculations, see C&W October 12, 2012 Report at 16, which is the amount shown on the 2009 federal income tax return, see Selver, October 12, 2012 at 7. However, in accordance with the Landmarks Law, the depreciation is the "lower" of two per centum of the assessed value of the improvement, exclusive of the land, or the amount shown for depreciation of the improvement in the latest required federal income tax return." §25-302(v)(3)(a). Therefore, the Commission will use the \$14,670 amount in its calculations.

\$921,345 per building, \$1,842,690 total, and \$2,982 per window.<sup>35</sup> Gleeds, April 25, 2014. The justification for the scope of work was that “Stahl and Gleeds agreed that any significant renovation of the subject buildings would have properly included the replacement of all the buildings’ remaining original windows with new and larger windows that matched the windows that had previously been replaced.”<sup>36</sup> Id. The Commission finds the Owner’s proposed window work is excessive and unnecessary. The scope of work is not supported by a conditions report, and there is no justification under the Landmarks Law for enlarging all of the historic window openings on the three street-facing facades and installing new windows that do not match the historic windows in any respect. The Commission also wonders whether a reasonably prudent and efficient owner would expend the money to enlarge windows facing the rear or courtyards either.

Therefore, for purposes of the depreciation analysis, the Commission will consider the cost to replace windows only in the 53 apartments vacant at the time of designation. Based on a review of the floor plans, the Commission estimates that there are on average 4 windows in every apartment, or 212 total windows that could be replaced. However, some windows in these apartments have already been replaced. In the absence of the Applicant providing an analysis showing how many windows in the 53 apartments had already been changed, the Commission conservatively estimates that at least 15 percent of the windows have already been changed, thereby reducing the scope of the window work to approximately 180 windows.

The Commission also finds that an appropriate replacement window, including removal, installation and any collateral repair, would cost significantly less than Gleeds estimate of \$2982 per window. Based on its expertise in the area, the Commission finds that budgeting \$2000 per window for the Apartments Only scenario is reasonable.<sup>37</sup>

Finally, with respect to soft costs, the Commission notes that soft costs are normally not depreciable, but that the Commission did allow some soft costs in KISKA to be included in the depreciation calculation. The applicant has argued for a soft cost factor of approximately 32 percent,

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<sup>35</sup> The Commission notes the Applicant has submitted confusing and contradictory information about the window work. Although describing the work as “window replacement” in various written submissions, the Gleeds August 27, 2012 Report presumes, without explicitly stating, that more than 300 window openings would be enlarged, in addition to replacing the historic windows with non-historic aluminum windows that do not match the historic windows. Gleeds defended the high cost of this windows work, more than \$5,400 per window, in its October 11, 2013 submission. However, in response to questions by the Commission, Gleeds has sought to “clarify” the information about the scope of the window work and states that it actually involves the enlargement of 618 window openings, all window openings and windows that had not already been replaced, at a cost of “\$2,982 per window.” Gleeds, April 25, 2014.

<sup>36</sup> Gleeds provided no conditions report detailing the condition of the windows or otherwise indicating that they were beyond repair and needed to be replaced. Based on its own extensive expertise with window replacement, and in the absence of a conditions report demonstrating that the existing windows were beyond repair, the Commission finds that the record does not support wholesale window replacement, that it would be inappropriate to enlarge windows on the primary facades of the buildings. The Commission also finds that the scope of work is excessive, as it is unnecessary to enlarge windows in the courtyards or rears of the Subject Buildings. The Commission further finds that the owner could strip, repair and repaint the approximately 618 remaining historic windows, and replace only those that were deteriorated beyond repair, and, if done right, this work would require minimal damage to the façade and interiors.

<sup>37</sup> The Commission notes that this projection is for wood windows, and that the Subject Buildings, and the Complex as a whole, could be approved for aluminum windows that match the historic windows in everything but material, and that the cost for these windows would be substantially less.

assuming the soft costs are not financed. See Stahl, May 2, 2014; Cushman, May 5, 2014.<sup>38</sup> (Cushman notes that the Subject Buildings are, perhaps, more similar to buildings in the outer boroughs, where soft costs are slightly lower. Cushman, May 5, 2014 at 2.) More than \$1.6 million of the projected \$5 million in soft costs relates to interest on the construction loan. Stahl, May 2, 2014. The Commission notes that mortgage interest is not included when calculating a reasonable return under the hardship test. Admin. Code §25-309(v)(3)(a). And, in KISKA, the only explicitly loan-related item included in the list of soft costs was the mortgage recording tax. KISKA at Table A, p. 22. Therefore, the Commission finds that loan interest should not be included in the soft cost allowance. If loan interest is deducted, the Applicant's estimate of soft costs is reduced to 21.8 percent of hard costs.<sup>39</sup>

Based on the discussion above, the Commission finds that, in addition to 2 percent of the value of the Subject Buildings exclusive of land, the costs of renovating 53 apartments vacant at the time of designation in November 2006 should be included in calculating depreciation, plus 15% contingency and 22% for soft costs. In addition, for the Apartments Only scenario, the cost of 180 new windows, at \$2000 per window, will be included. See Appendix B.1 and Appendix C.1.

#### IX. Real Estate Taxes After Renovation

Cushman projects real estate taxes after renovation at 25 percent of effective gross income. C&W February 5, 2009 Report at 22. For example, this would equate to a tax of \$577,849, based on the Commission's projected effective gross income of \$2,311,397 for the Apartments Only scenario (assuming \$40 per square foot). The Commission notes that Cushman's analysis showed that real estate taxes for apartment buildings in Manhattan averaged 23.83 percent of effective gross income. *Id.*

The Commission sees no basis to project real estate tax after renovation based on a percentage of effective gross income. There is no formal relationship between real estate taxes and effective gross income. The Department of Finance bases real estate assessment and, therefore, real property tax on income net of expenses, not effective gross income.<sup>40</sup> Instead, the Commission has calculated the projected real estate taxes based on the Department of Finance formula for using the income approach for determining assessed value. For comparison, the Commission applied the effective tax rate of 13.241 to the assessed value, and projects real estate taxes after renovation to be \$542,768 for the Apartments Only scenario at \$40 per square foot.<sup>41</sup> See Sheares, April 14, 2014 at 1. The Commission

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<sup>38</sup> This estimate is for the Base Building and Apartments scenario. The Applicant did not do an analysis for any other scenario, allegedly for lack of time, but argued that it would not be less and would probably be more. *Id.*

<sup>39</sup>  $\$5,015,859 - 1,617,554 = 3,398,305 + 254,872$  (7.5% contingency) = 3,653,117 of \$16,697,332 in hard costs.

<sup>40</sup> Indeed, the relationship between real estate taxes and effective gross income is dependent on the expense ratio; the higher the expense ratio the lower the real estate tax is as a percentage of effective gross income. In other words, all things being equal, a highly efficient management of a rental building, that keeps expenses to a minimum, will result in a higher profit, and therefore higher real estate taxes, and, ultimately, a higher percentage of real estate tax to effective gross income than an owner who has the exact same effective gross income but higher expenses.

<sup>41</sup> Notwithstanding that the Commission is not projecting real estate taxes as a fixed percentage of effective gross income, the Commission notes that its projected real estate tax using the income approach for the Apartments Only scenario at \$40 per square foot is equal to 23.44 percent of effective gross income, which is almost identical to the average for Manhattan apartment buildings. See C&W Feb. 5, 2009 Report at 22.

finds that a reasonably prudent and efficient owner would seek to have as low a real estate tax as possible.<sup>42</sup> See Appendix B.2 and Appendix C.2 for calculations.

#### X. Six Percent of Assessed Value After Renovation

Because the vacant apartments at the Subject Buildings will be renovated and the income generated by the buildings will increase, the assessed value of the Subject Properties will potentially increase. Therefore, in analyzing the alleged hardship, the Commission computes the six percent return in relation to the post-renovation assessed value.

There are two methods for projecting the assessed value after the renovation: the “income approach,” which projects assessment based on income generated by the renovated buildings, and the “cost approach,” which projects assessment after renovation based on a percentage of the costs of renovation. The Department of Finance has stated that for residential rental multiple dwellings the Department uses the income approach. See Timothy Sheares, Assistant Commissioner, Department of Finance, April 14, 2014; Sheares May 12, 2014.

The Owner has argued that the cost approach should be used. The Owner acknowledges that the Department of Finance “frequently” uses the income approach to reassess after renovations, but argues that the Department of Finance has taken “physical changes” to property into account when assessing property. Korngold, May 5, 2014. Assistant Commissioner Sheares has disputed this, noting that Mr. Korngold is confusing physical changes with utilization of the cost approach, which is incorrect. Sheares, May 12, 2014. According to Assistant Commissioner Sheares, reference to an increase in assessment based on physical changes is for the purpose of explaining why some increases in assessment are phased in (transitional) and others are not (physical). He reiterated that DOF “use[s] the income approach to value all income producing properties.” Sheares, May 12, 2014.

Finally, the Applicant argues that the cost approach “is the fairest and most appropriate approach” to “determin[e] assessed value where a hardship application involves analysis of building renovations because, unlike the ‘income approach,’ the cost approach takes into account at least some, although not all, of the costs of renovation work and, accordingly, is more likely to show whether the contemplated renovation would allow the applicant to earn a reasonable return on its investment.” Selver, October 12, 2012 at 7; Selver, May 7, 2014 at 2-3; see also letters from Paul Korngold, dated February 25, 2014, February 28, 2014.

The Commission notes that the cost approach generates a higher assessed value than the income approach, and that a prudent owner of a rental property would seek to have a lower assessed value, and therefore lower real estate taxes.<sup>43</sup> Cushman implicitly acknowledges that no prudent owner would want to pay the real estate tax based on an assessment arrived at using the cost approach, which is why Cushman proposed projecting real estate taxes as 25 percent of EGI. The Commission agrees that the cost approach makes sense where an owner is selling the property after renovations, as the

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<sup>42</sup> If the real estate tax was based on a post-renovation assessed value using the cost approach for renovating all 97 vacant apartments, as advocated by Stahl, the real estate tax would be \$816,118. See Appendix B.2 for calculation. This is 50% higher than the projected real property tax using the income approach, and equates to 35.30% of EGI (at \$40 per square foot), or 41% higher than projected by Cushman.

<sup>43</sup> Real estate taxes are significantly higher if the cost approach is used to set assessed value. For example, in the scenario where renovated apartments could generate \$35 square foot rents, real estate taxes using the income approach are projected to be \$467,497, compared to \$827,936 if the assessment uses the cost approach.

renovation costs need to be recouped in the sale of the property in order for the owner to make a profit. In contrast, with a rental property an owner will recoup renovation costs over time and will utilize depreciation allowances and lower real estate taxes, along with other strategies, to decrease operating expenses, and thereby increase profits.

The Commission also notes that the Applicant's application of the cost approach doesn't necessarily follow the guidelines that the Applicant argues the Department of Finance uses. For example, the Applicant's tax counsel submitted cost guidelines used by the Department of Finance in tax year 2010/2011. However, the Applicant made no effort to show that its cost projections comply with DOF's cost schedules or any other requirements.<sup>44</sup>

Finally, the Commission notes that it did not employ the cost approach in the KISKA case for development scenarios involving rental properties.<sup>45</sup> KISKA at 22, compare also KISKA Tables E and F with Tables H – K. The Commission finds that the income approach is the most reasonable and likely method that would be used to determine the post-renovation assessed value, it is consistent with the policy of the Department of Finance, and consistent with the Commission's approach in the KISKA. Therefore, it will be utilized in this proceeding to project the post-renovation assessment value for lot 22.

Nevertheless, for purposes of comparison only, the Commission has also computed the six percent return based on the cost approach. The Commission has computed the cost approach under two scenarios: costs to renovate 53 vacant apartments (the other 44 being a self-imposed hardship and not included) and the cost to renovate 97 vacant apartments. For the reasons set forth supra, the Commission includes a 15 percent contingency and a 22 percent soft cost factor. See Appendix B.2.

#### XI. Reasonable Return Analysis

The Commission analyzed the rate of return that could have been generated by the Apartments Only scenario, assuming rents of \$35 and \$40 per square foot, and the Minimum Habitability scenario. In addition, the Commission also analyzed the scenario where 53 apartments were renovated pursuant to the Apartments Only level, including window replacement, and 44 were renovated to a Minimum Habitability level. A summary of the Commission's analysis is below, along with the applicable 6 percent reasonable return of the post-renovation assessed value using the income approach and the cost approach (assuming the cost of renovating 53 apartments and 97 apartments). The analysis includes the

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<sup>44</sup> Mr. Korngold notes that tax year 2010/2011 "was the last time the Department of Finance publicly made this information available," Korngold, February 25, 2014 at 2, which tends to support Commission Sheare's statement that the Department of Finance uses the income approach.

<sup>45</sup> Stahl is incorrect when it alleges the Commission "used" the cost approach in the KISKA hardship application. See Selver, October 12, 2012 at 7; Selver May 7, 2014 at 2. In KISKA the Commission substituted the purchase price for the assessed value due to the fact that the owners in that case had purchased the buildings prior to calendaring and prior to designation, without knowledge that the Commission was interested in them. In that case the applicant analyzed a number of development scenarios, including development scenarios that involved the outright sale of the buildings or apartments, as well as scenarios for rental properties (simplex and duplex apartments). The Commission found that "for calculating the potential value of the buildings as condominiums or individual townhouses, the costs of renovation should be treated as a one-time expense to be recouped upon the sale of the property. Accordingly, such costs would be added to the original sales price of each building before calculating the rate of return. KISKA at 22. Significantly, in the scenarios contemplating rentals the Commission established a reasonable return with reference only to the sales price – renovation costs were not included. See KISKA at 35-36.

various conclusions and determinations discussed above, including post-renovation rents, vacancy percentage, depreciation, a 22 percent soft cost factor, operating expenses at \$11.46/gsf, and real estate taxes based on the income approach. A more detailed analysis for each scenario, including depreciation calculations and calculations for assessed value and real estate taxes, follows at Appendix B.

<b>Renovation Scenario</b>	<b>Profit</b>	<b>6% return Income Approach</b>	<b>6% Return Cost Approach 53 Apts</b>	<b>6% Return Cost Approach 97 Apts</b>
Apts Only @ \$40/sf	693,717	245,949	270,993	369,814
Apts Only @ \$35/sf	598,728	212,272	270,993	369,814
Minimum Habitability @ \$869/month	485,923	172,278	224,334	284,377
53 Apts @ \$35/sf & 44 Apts @ \$869/month	538,763	191,012	270,993	331,035

In addition, the Commission also calculated the reasonable return for the four scenarios above, but included a higher cost for operating expenses, \$11.96/gsf and a soft cost factor of 32.29 percent of hard costs. The summary of this analysis is below. A more detailed analysis for each scenario, including depreciation calculations and calculations for assessed value and real estate taxes, follows at Appendix C.

<b>Renovation Scenario</b>	<b>Profit</b>	<b>6% return Income Approach</b>	<b>6% Return Cost Approach 53 Apts</b>	<b>6% Return Cost Approach 97 Apts</b>
Apts Only @ \$40/sf	644,821	245,518	281,028	388,184
Apts Only @ \$35/sf	549,832	211,841	281,028	388,184
Minimum Habitability @ \$869/month	443,183	170,378	230,434	295,541
53 Apts @ \$35/sf & 44 Apts @ \$869/month	501,240	185,427	281,028	346,135

Based on the findings and information above, the Commission finds that the Applicant has not carried its burden of "establish[ing] to the satisfaction of the Commission" that the Subject Properties, if operated in a reasonably efficient and prudent manner, cannot generate a net return of six percent of the post-renovation assessed value of the Subject Properties in the test year. Significantly, these analyses do not include any allowance for the income from other reasonable sources of revenue, such as building storage units or laundry facilities in the basement or renting the roofs for cell tower antennae, or the value of development rights.<sup>46</sup> For all of these reasons, the application is denied.

<sup>46</sup> It should also be noted that the rent roll for the 93 occupied apartments, \$969,495, was provided by Cushman in the May 1, 2010 Report. It is four years old and, therefore, may undercount the actual rental income because it doesn't reflect any yearly increases allowed under applicable rent regulations.

## APPENDIX A:

### Moderately renovated apartments will be comparable to apartments in the Other Buildings.

In making a comparison between moderately renovated apartments in the Subject Buildings and vacant apartments in the Other Buildings, the Commission notes that the apartments in the Subject Buildings will be newly renovated. Moreover, the vast majority of apartments, approximately 85 percent, of the 97 vacant apartments, will be substantially renovated to a level 2 or 3 condition, and that more than 60 percent will be renovated to a level 3 condition. Gleeds August 27, 2012 Report. A level 2 renovation includes new bathrooms and fixtures, new kitchens and appliances, 20% repair of wood flooring, sanding and sealing of wood flooring, 40% repair of plaster partitions and plaster ceiling, 40% finish carpentry (base and moldings, new lighting, new interior doors and painting. *Id.* at 3-4. A level 3 renovation includes new bathrooms and fixtures, new kitchens and appliances, 60% repair, sanding and sealing of wood flooring, 60% repair of plaster partitions and plaster ceiling, new radiators, 60% finish carpentry (base and moldings, new lighting, new interior doors and painting. *Id.*, at 4. In other words, apartments receiving a level 3 renovation have been extensively renovated (baths, kitchens, 60 percent of the interior surfaces).<sup>47</sup> In contrast, there is no evidence in the record that apartments in the Other Buildings are renovated to this degree or are generally renovated to a higher degree.<sup>48</sup>

This is true, even for the former MSK apartments. The Applicant has consistently claimed that the MSK apartments were renovated to a higher standard than the typical level, but there is nothing in the record to support that allegation. And, based on site visits, the MSK apartments did not appear to be renovated to a greater degree, if at all, than a level 3 apartment under the Owner's renovation plans. Moreover, the MSK apartments were renovated many years ago, so their fixtures and appliances are not new, unlike the apartments in the Subject Buildings.

Stahl and Cushman consistently claim that the apartments in the Other Buildings are superior in a variety of ways, but the Commission finds the record does not support this claim. In Cushman's presentation at the January 24, 2012 public hearing, they discussed the difference between the existing conditions of the vacant apartments and "updated" apartments in other buildings in the complex. Cushman went on to explain that it "concluded that if units [in the Subject Buildings] were brought up to a standard that was depicted in the western portion of the overall block, then the rents of the subject property would be equivalent to forty dollars per square feet." Jan. 24, 2012 Public Hearing at 30. Thus, the presumption in the economic analyses of Cushman is that in the Base Building and Apartments Scenario and the Apartments Only Scenario apartments would be renovated to a standard at least equivalent to "updated" apartments in the Other Buildings, as depicted in photographs in their reports and shown at the public hearing. See C&W February 5, 2009 Report at 28; C&W May 1, 2010 Report at 23. Having reviewed the photographs and the Record, and based on site visits to the Subject Buildings, the Commission finds that the finishes depicted in the photographs depict typical, inexpensive to moderate appliances and finishes one expects to find in these types of apartments, and that they do not

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<sup>47</sup> Even in the Minimum Habitability scenario, apartments will get new bathroom and kitchen appliances in addition to general, if not as extensive, repairs. See ProjectConsult, March 213, 2011 Report.

<sup>48</sup> In discussing the pictures in the Cushman reports of "updated" apartments in the Other Buildings, Stahl concedes that these apartments were only "renovated and improved to a higher standard than contemplated under some of the repair/renovation scenarios that were analyzed in connection with our hardship application." Stahl, February 12, 2014 at 2.

materially differ from the level of renovation contemplated in the Apartments Only scenario.<sup>49</sup> Indeed, it is possible that apartments renovated to a level 2 and/or 3 condition will be superior to “updated” apartments in the Other Buildings.

A. Layouts.

With respect to alleged better “layouts,” the Commission notes that by these terms the Applicant is referring to slightly bigger bedrooms and slightly more closet space than are found in apartments in the Subject Buildings. Originally, Stahl claimed that bedrooms in the Subject Buildings could not accommodate a queen size bed; after questioning by LPC Stahl modified that answer and argued that even if a queen size bed could fit that other furniture would not. Based on information provided by the Applicant, the Commission finds that bedrooms in some of the apartments in the Other Buildings are slightly bigger than bedrooms in apartments in the Subject Buildings but that in many instances the bedrooms are comparable.

B. Common spaces.

The Commission finds that the common spaces in the Other Buildings and the Subject Buildings appear comparable. The common areas are simple, unadorned spaces with utilitarian fixtures. When asked what improvements to common areas in the Other Buildings did not happen to the common areas of the Subject Buildings, Stahl notes only that it had upgraded lighting, door hardware, mailboxes and exterior apartment doors. (February 20, 2013 Response to Questions, p. 19. Stahl stated that “some” of the other buildings had upgraded electrical and plumbing, and roof work, but did not give any specifics. *Id.*<sup>50</sup> Based on these facts, and the one site visit, the Commission finds that Stahl has not demonstrated that the Other Buildings have generally superior conditions to the Subject Buildings.

C. The fact that the Subject Buildings are east of the Other Buildings is not a factor.

While Stahl has argued that the apartments in the Other Buildings are more desirable than apartments in the Subject Buildings because they are closer to the Fourth Avenue subway lines and commercial streets, the Commission finds that this difference is negligible. First, many of the apartments on Lots 30 and 10 are located in the middle of the block or closer to York Avenue. Second, the Subject Buildings have better light and air than the midblock buildings. Third, on-line rating of the walkability of the neighborhood indicates no material difference between the First Avenue and York Avenue buildings.

D. Apartment size is comparable

The Owner has argued that apartments in the Other Buildings are substantially bigger than apartments in the Subject Buildings. See e.g., Stahl, November 12, 2013 at 1-3. In considering this testimony, the Commission notes that that the issue has been complicated by different and sometimes confusing testimony from the Applicant with respect to the gross and leasable square footage.<sup>51</sup>

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<sup>49</sup> The Commission further notes that Stahl did not cite superior finishes as a reason that apartments in the Other Buildings allegedly were more desirable than apartments in the Subject Buildings. See February 20, 2013 Response to Questions, pp. 11, 18.

<sup>50</sup> The Commission notes that the roofs of the Subject Buildings do not appear to need replacement, as the Base Building and Apartments scenario did not include roof replacement. Gleeds, August 27, 2012 Report, at 3.

<sup>51</sup> For example, Stahl has stated that the “gross [residential] building area of the Other Buildings is 445,644 square feet,” that the Other Buildings have “762 residential units, which represents 585 square feet of gross building area per apartment.” Selver, February 20, 2013 Response to Question 43(f), at 36. Subsequently, Stahl has provided



With respect to the Subject Buildings, the Commission notes that the C&W February 2009 Report, states that the gross building area of the Subject Buildings is 84,826 and the net rentable area is 72,102, which equates to an average size of 446 gross square feet and 379 net rentable square feet per apartment. Without any discussion or explanation, the C&W May 2010 Report reduced the net rentable square footage from 72,102 to 70,406, or 371 net rentable square feet per apartment. In its December 9, 2013 letter, Stahl conceded that the 371 net rentable square footage figure was based on "measurements of a representative sample of the apartments in these buildings." (Answer to Question 3.) Stahl then stated that it "recently measured each of the vacant apartments in the Subject Buildings and found that . . . the average rentable area of these apartments is actually slightly less – 364 square feet." Thus, as of this point in the proceedings, Stahl has not provided the Commission with exact or consistent information about the average net leasable footage in the Subject Buildings.

With respect to the Other Buildings, there is not that much of a difference in the gross square footage of apartments in the Subject Buildings and about half the apartments in the rest of the Complex. The Commission notes that according to information provided by Stahl and which is publicly available, the average gross square footage varies substantially from lot to lot within the Complex. Stahl November 12, 2013 letter, Exh. A. The 331 apartments on lot 1 have an average of 595 gsf per unit; the 293 units on lot 10 have an average of 457 gsf,<sup>52</sup> and the 235 units on lot 30 average 531 gsf per unit. Thus, the 331 apartments on lot 1 appear to be substantially larger than the rest of the apartments in the Complex. If one looks only at lots 10 and 30, with 528 units (about half of the units in the entire Complex), the average unit has 490 gsf, which is less than 10 percent larger than the gross square footage of apartments in the Subject Buildings.

The average leasable square footage is a more difficult number to determine, however, as it is not publicly available in tax filings or other sources. Stahl has consistently claimed that the apartments in the Other Buildings are substantially bigger, both on a gross and leasable basis.<sup>53</sup> When pressed to explain how it arrived at this statement with respect to leasable square feet, Stahl conceded that its estimate was based measuring a "representative sample of apartments." Stahl Letter of December 9, 2013, Answer to Question 3. At LPC's request, Stahl provided measurements for these sample lines of apartments. Stahl, February 6, 2014, Exh. B. When asked how it decided which apartment lines to measure, Stahl stated that it chose these lines because "they were identical to apartment lines in other [buildings in the Complex]." Stahl, February 6, 2014 at 1. However, the Commission notes that it remains unclear whether these lines are a good representative sample of apartment sizes on these lots. The three lines measured on lot 1 represent 14.5% of the apartments on that lot; the 21 lines measured on lot 30 represent 51% of the apartments on that lot; and the 12 lines on lot 10 represent 24.5% of the apartments on lot 10. Similarly, the 48 apartments on lot 1 represent 20 percent of the 240 apartments

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information showing that the gross residential building area of the Other Buildings is 455,825 square feet, that there are 859 apartments 530.6 gross building area per apartment. Stahl November 12, 2013 letter, at Exh. A. (For reasons that are unclear, even in this Exhibit Stahl provides contradictory information. The block plan showing the tax lots with the different buildings and apartments per buildings indicates there are 293 apartments on Lot 10, but in the summary below the plan Stahl shows only 290. Stahl utilizes the 290 figure to arrive at 856 apartments on lots 1, 10 and 30 to come up with its statement that there are 532.5 gross square feet per apartment. Id. at 2.

<sup>52</sup> Stahl appears to make a mistake in its calculations. As shown on Exh. A, Lot 10 has 293, not 290 apartments. Therefore, the average gsf per unit is 456.8 not 461.59.

<sup>53</sup> Stahl argues that the difference between the size of apartments in the Other Buildings is even greater on a net leasable foot basis (23 percent greater) than on a gross square foot basis (19 percent greater). The Commission notes, however, that if one uses the real average net leasable footage for all apartments in the Subject Buildings (371), that the alleged difference between net and gross is negligible, about 1 percent (119.2 percent gross differential versus 120.4 percent).

in the sample; the 120 apartments in lot 30 represent 50 percent of the sample, with the 72 apartments on lot 10 representing the remaining 30 percent of the sample.

With these caveats, the Commission notes that the average leasable apartment size varies significantly from lot to lot. If one takes out the apartments on lot 1, which represents the smallest sample of the apartments per lot and the largest apartments by size by a significant amount, and looks only at the apartments on lots 10 and 30, the average size goes down from 451 to 392 leasable square feet. That is less than 7 percent larger than the 371 square foot apartments in the Subject Buildings. In addition, the J line on lot 30 is by far the largest apartment line on lots 30 and 10, and represents the largest number of apartments (78) measured Stahl. If one removes that line from the calculation and looks only at the 114 apartments represented by lines B, F, C and D on lots 30 and 10 (47.5 percent of the 240 apartments in the sample) the average apartment has only 368 leasable square feet, which is less than the average apartment in the Subject Building.

Based on the above, the Commission finds that while some apartments in the Other Buildings are larger than average apartments in the Landmark Building, many apartments in the Other Buildings are of similar size to apartments in the Subject Buildings, or even smaller.

# **HARDSHIP RESOLUTION : APPENDIX B**

**Scenario: Reasonable Return of Apartments Only at Rents of \$40 per square leasable foot; \$11.46/gsf operating expense; 22% soft cost**

*Income information for 93 occupied apartments from C&W October 12, 2012 Report*

Income Type	Apartments	Cost/Sq. Leasable Foot	Income Amount	5% Vacancy Rate	Income minus 5% Vacancy Rate	Notes
Rental Income - Renovated Apartments	97	\$ 40	\$ 1,437,765	\$ 71,888	\$ 1,365,877	Projected income
Rental Income - Occupied Apartments	93		\$ 969,495	\$ 48,475	\$ 921,020	Actual income
Laundry Income			\$ 12,000	N/A	\$ 12,000	
Miscellaneous Revenue			\$ 12,500	N/A	\$ 12,500	
Total			\$ 2,431,760	\$ 120,363	\$ 2,311,397	

## **EXPENSES**

Expense Type	Apartments	Gross Square Feet	Cost/ Gross Sq. Foot	Expense Amount	Notes
Expenses - Exclusive of Real Estate Tax	N/A	84,826	\$ 11.46	\$ 972,106	
Real Estate Tax				\$ 542,768	See infra Appendix B.2
Depreciation				\$ 102,805	See infra Appendix B.1
Total				\$ 1,617,680	

*Note the Commission has chosen to use the depreciation amount that included an allocation for soft costs of 22% of hard costs, although the Commission does not believe that soft costs can be depreciated. Nevertheless, the Commission included this cost to be consistent with its decision in KISKA.*

**Profit/(Loss)** **\$ 693,717**

*This estimate of profit does not include any potential income from renovating the basements for laundry or storage facilities or the value from unused development rights.*

## **Reasonable Return**

Income Approach	\$245,949	See infra Appendix B.2
Cost Approach - 53 Apartments	\$270,993	Used for illustrative purposes only; see infra Appendix B.2
Cost Approach - 97 Apartments	\$369,814	



# **HARDSHIP RESOLUTION: APPENDIX B**

**Scenario: Reasonable Return of Apartments Only at Rents of \$35 per square leasable foot; \$11.46/gsf oprating expense; 22% soft cost**

*Income information for 93 occupied apartments from C&W October 12, 2012 Report*

Income Type	Apartments	Cost/Sq. Leasable Foot	Income Amount	5% Vacancy Rate	Income minus 5% Vacancy Rate	Notes
Rental Income - Renovated Apartments	97	\$ 35	\$ 1,259,545	\$ 62,977	\$ 1,196,568	Projected income
Rental Income - Occupied Apartments	93		\$ 969,495	\$ 48,475	\$ 921,020	Actual income
Laundry Income			\$ 12,000	N/A	\$ 12,000	
Miscellaneous Revenue			\$ 12,500	N/A	\$ 12,500	
Effective Gross Income (EGI)			\$ 2,253,540	\$ 111,452	\$ 2,142,088	

## **EXPENSES**

Expense Type	Apartments	Gross Square Feet	Cost/ Gross Sq. Foot	Expense Amount	Notes
Expenses - Exclusive of Real Estate Tax	N/A	84,826	\$ 11.46	\$ 972,106	
Real Estate Tax				\$ 468,448	See infra Appendix B.2
Depreciation				\$ 102,805	See infra Appendix B.1
Total				\$ 1,543,360	

*Note the Commission has chosen to use the depreciation amount that included an allocation for soft costs of 22% of hard costs, although the Commission does not believe that soft costs can be depreciated. Nevertheless, the Commission included this cost to be consistent with its decision in KISKA.*

**Profit/(Loss)** \$ 598,728

*This estimate of profit does not include any potential income from renovating the basements for laundry or storage facilities or the value from unused development rights.*

## **Reasonable Return**

Income Approach	\$212,272	See infra Appendix B.2
Cost Approach - 53 Apartments	\$270,993	Used for illustrative purposes only; see infra Appendix B.2
Cost Approach - 97 Apartments	\$369,814	Used for illustrative purposes only; see infra Appendix B.2



# **HARDSHIP RESOLUTION: APPENDIX B**

**Scenario: Reasonable Return of Minimum Habitability at Rents of \$869/month; \$11.46/gsf oprating expense; 22% soft cost**

*Income information for 93 occupied apartments from C&W October 12, 2012 Report*

Income Type	Apartments	Monthly Rent	Income Amount	5% Vacancy Rate	Income minus 5% Vacancy Rate	Notes
Rental Income - Renovated Apartments	97	\$ 869	\$ 1,011,516	50,576	\$ 960,940	Projected income
Rental Income - Occupied Apartments	93		\$ 969,495	48,475	\$ 921,020	Actual income
Laundry Income			\$ 12,000	N/A	\$ 12,000	
Miscellaneous Revenue			\$ 12,500	N/A	\$ 12,500	
Effective Gross Income (EGI)			\$ 2,005,511	\$ 99,051	\$ 1,906,460	

## **EXPENSES**

Expense Type	Apartments	Gross Square Feet	Cost/ Gross Sq. Foot	Expense Amount	Notes
Expenses - Exclusive of Real Estate Tax	N/A	84,826	\$ 11.46	\$ 972,106	
Real Estate Tax				\$ 380,189	See infra Appendix B.2
Depreciation				\$ 68,243	See infra Appendix B.1
Total				\$ 1,420,538	

*Note the Commission has chosen to use the depreciation amount that included an allocation for soft costs of 22% of hard costs, although the Commission does not believe that soft costs can be depreciated. Nevertheless, the Commission included this cost to be consistent with its decision in KISKA.*

**Profit/(Loss) \$ 485,923**

*This estimate of profit does not include any potential income from renovating the basements for laundry or storage facilities or the value from unused development rights.*

## **Reasonable Return**

Income Approach	\$172,278	See infra Appendix B.2
Cost Approach - 53 Apartments	\$224,334	Used for illustrative purposes only; see infra Appendix B.2
Cost Approach - 97 Apartments	\$284,377	Used for illustrative purposes only; see infra Appendix B.2





# **HARDSHIP RESOLUTION: APPENDIX B**

Scenario: Reasonable Return of Apartments Only for 53 apartments at Rents of \$35/square leasable foot also assuming Minimum Habitability renovation of 44 Apartments; \$11.46/gsf operating expense; 22% soft cost

## **INCOME**

Income Type	Apartments	Cost/Sq. Leasable Foot		Income Amount	5% Vacancy Rate	Income minus 5% Vacancy		Notes
						Rate		
Rental Income - Renovated Apartments	53	\$	35	\$ 688,205	34,410	\$	653,795	Projected income
Rental Income - Renovated Apts	44	-	\$ 869	\$ 458,832	22,942	\$	435,890	Projected income
Rental Income - Occupied Apartments*	93			\$ 969,495	48,475	\$	921,020	Actual income
Laundry Income				\$ 12,000	N/A	\$	12,000	
Miscellaneous Revenue*				\$ 12,500	N/A	\$	12,500	
Effective Gross Income (EGI)				\$ 2,141,032	\$ 105,827	\$	2,035,205	

\* Income information for 93 occupied apartments from C&W October 12, 2012 Report

## **EXPENSES**

Expense Type	Apartments	Gross Square Foot		Cost/ Gross Sq. Foot	Expense Amount	Notes
Expenses - Exclusive of Real Estate Tax	N/A	84,826		\$ 11.46	\$ 972,106	
Real Estate Tax					\$ 421,531	See infra Appendix B.2
Depreciation					\$ 102,805	See infra Appendix B.1
Total					\$ 1,496,443	

Note the Commission has chosen to use the depreciation amount that included an allocation for soft costs of 22% of hard costs, although the Commission does not believe that soft costs can be depreciated. Nevertheless, the Commission included this cost to be consistent with its decision in KISKA.

**Profit/(Loss)** \$ 538,763

This estimate of profit does not include any potential income from renovating the basements for laundry or storage facilities or the value from unused development rights.

## **Reasonable Return**

Income Approach \$191,012 See infra Appendix B.2  
 Cost Approach - 53 Apartments \$270,993 Used for illustrative purposes only; see infra Appendix B.2  
 Cost Approach - 97 Apartments \$331,035 Used for illustrative purposes only; see infra Appendix B.2



## APPENDIX B.1: DEPRECIATION

### Apartments Only: Depreciation without Soft Costs

Item Type	Quantity in Units	Renovation Cost/Unit	Projected Cost	Contingency		Projected Renovation Cost
				Rate as % of Cost	Contingency Amount	
Vacant Apartments	53	\$52,471	\$2,780,963	15%	\$417,144.45	\$3,198,107
Windows	180	\$2,000	\$360,000	15%	\$54,000	\$414,000
			\$3,140,963		\$471,144	\$3,612,107

Depreciation: 2% x value of improvement w/o land + renovation cost

Value of Subject Buildings Exclusive of Land	\$733,500
Projected Renovation Cost	\$3,612,107
	\$4,345,607
Depreciation	\$86,912

### Apartments Only: Depreciation with 22% Soft Costs

Item Type	Quantity in Units	Renovation Cost/Unit	Projected Cost	Contingency		Soft Costs Rate as % of Cost	Soft Cost Amount	Projected Renovation Cost
				Rate as % of Cost	Contingency Amount			
Vacant Apartments	53	\$52,471	\$2,780,963	15%	\$417,144.45	22.00%	\$703,583.64	\$3,901,691
Windows	180	\$2,000	\$360,000	15%	\$54,000.00	22.00%	\$91,080.00	\$505,080
			\$3,140,963		\$471,144		\$794,664	\$4,406,771

Depreciation: 2% x value of improvement w/o land + renovation cost

Value of Subject Buildings Exclusive of Land	\$733,500
Renovation Cost	\$4,406,771
	\$5,140,271
Depreciation	\$102,805

### Minimum Habitability: Depreciation with 22% Soft Costs (15% contingency already included in cost/unit)

Item Type	Quantity in Units	Renovation Cost/Unit	Projected Cost	Contingency		Soft Costs Rate as % of Cost	Soft Cost Amount	Projected Renovation Cost
				Rate as % of Cost	Contingency Amount			
Vacant Apartments	53	\$41,427	\$2,195,631	15%	\$0.00	22.00%	\$483,038.82	\$2,678,670
Windows	0	-	\$0	15%	\$0.00	22.00%	\$0.00	\$0
			\$2,195,631		\$0		\$483,039	\$2,678,670

Depreciation: 2% x value of improvement w/o land + renovation cost

Value of Subject Buildings Exclusive of Land	\$733,500
Renovation Cost	\$2,678,670
	\$3,412,170
Depreciation	\$68,243



**APPENDIX B.2:****ASSESSED VALUE AFTER RENOVATION, REASONABLE RETURN AND PROJECTED REAL ESTATE TAXES  
ASSUMING \$11.46/GSF OPERATING COST AND 22% SOFT COST****INCOME APPROACH*****Income Approach - Apartments Only Assuming Income at \$40 per square leasable foot***

	Description	% Rate	Calculation
Net Operating Income	Effective Gross Income (EGI) - Expenses	-	\$1,236,486 Expenses do not include real estate tax
Capitalized Market Value	NOI / Total cap rate 13.574	13.574%	\$9,109,221
Assessed Value	45% of capitalized market value	45%	\$4,099,149
Reasonable Return	6% of assessed value	6%	\$245,949
Projected Real Property Tax	13.241% of assessed value	13.241%	\$542,768

***Income Approach - Apartments Only Assuming Income at \$35 per square leasable foot***

	Description	% Rate	Calculation
Net Operating Income	Effective Gross Income (EGI)- Expenses	-	\$1,067,177 Expenses do not include real estate tax
Capitalized Market Value	NOI / Total cap rate 13.574	13.574%	\$7,861,917
Assessed Value	45% of capitalized market value	45%	\$3,537,863
Reasonable Return	6% of assessed value	6%	\$212,272
Projected Real Property Tax	13.241% of assessed value	13.241%	\$468,448

***Income Approach - Minimum Habitability Assuming Income of \$869/Month***

	Description	% Rate	Calculation
Net Operating Income	Effective Gross Income (EGI)- Expenses	-	\$866,111 Expenses do not include real estate tax
Capitalized Market Value	NOI / Total cap rate 13.574	13.574%	\$6,380,662
Assessed Value	45% of capitalized market value	45%	\$2,871,298
Reasonable Return	6% of assessed value	6%	\$172,278
Projected Real Property Tax	13.241% of assessed value	13.241%	\$380,189

***Income Approach - Apartments Only (\$53) and Minimum Habitability (\$44)***

	Description	% Rate	Calculation
Net Operating Income	Effective Gross Income (EGI)- Expenses	-	\$960,294 Expenses do not include real estate tax
Capitalized Market Value	NOI / Total cap rate 13.574	13.574%	\$7,074,510
Assessed Value	45% of capitalized market value	45%	\$3,183,530
Reasonable Return	6% of assessed value	6%	\$191,012
Projected Real Property Tax	13.241% of assessed value	13.241%	\$421,531

## COST APPROACH FOR 53 APARTMENTS

*Cost Approach: Apartments Only - Same cost at both \$40 and \$35 per square foot*

	Description	% Rate	Calculation
Current Assessed Value	2009 assessed value		\$2,533,500
Hard Costs	See depreciation tab for calculation		\$4,406,771 Includes windows and 15% contingency
Soft Costs	22% Already included - see depreciation tab	0.00%	\$0
45% of Renovation Costs	45% of hard + soft costs	45%	\$1,983,047
Assessed Value	2009 assessed value+45% of Renovation Cost		\$4,516,547
Reasonable Return	6% of assessed value	6%	\$270,993
Projected Real Property Tax	13.241% of assessed value	13.241%	\$598,036

**NOTE:** The Commission is applying the cost approach as put forward by the Applicant for illustrative purposes only. As noted above, the Applicant has not demonstrated that this is in fact the correct way to apply the cost approach, and the Commission's use herein does not imply otherwise.

*Cost Approach: Minimum Habitability assuming income of \$869/month*

	Description	% Rate	Calculation
Current Assessed Value	2009 assessed value		\$2,533,500
Hard Costs	53 apartments x 41,427		\$2,195,631 Includes 15% contingency
Contingency	15% already included	0%	\$0
Soft Costs	22% of hard costs	22.00%	\$483,039
45% of Renovation Costs	45% of hard + soft costs	45%	\$1,205,401
Assessed Value	2009 assessed value+45% of Renovation Cost		\$3,738,901
Reasonable Return	6% of assessed value	6%	\$224,334
Projected Real Property Tax	13.241% of assessed value	13.241%	\$495,068

*Cost Approach: Apartments Only (53) and Minimum Habitability (44)*

	Description	% Rate	Calculation
Current Assessed Value	2009 assessed value		\$2,533,500
Hard Costs - 53 Apartments	53 apartments x 52,471		\$2,780,963
Hard Costs - Windows	180 windows x 2000		\$360,000
Hard Costs - Minimum Habitability	Not applicable		\$0
Total Hard Costs			\$3,140,963
Contingency	Hard cost of 53 apts + windows x 15%	15%	\$471,144
Soft Costs	22% of Hard costs + Contingency	22.00%	\$794,664
45% of Renovation Costs	45% of hard + soft costs	45%	\$1,983,047
Assessed Value	2009 assessed value+45% of Renovation Cost		\$4,516,547
Reasonable Return	6% of assessed value	6%	\$270,993
Projected Real Property Tax	13.241% of assessed value	13.241%	\$598,036

## COST APPROACH FOR 97 APARTMENTS

**Cost Approach: Apartments Only - Same cost at both \$40 and \$35 per square foot**

	Description	% Rate	Calculation
Current Assessed Value	2009 assessed value		\$2,533,500
Hard Costs	97 apts x 52,471 + 330 windows x 2,000		\$5,749,687
Contingency	15% of Hard costs	15%	\$862,453.05
Soft Costs	22% of Hard costs	22.00%	\$1,454,671
45% of Renovation Costs	45% of hard cost + contingency + soft costs	45%	\$3,630,065
Assessed Value	2009 assessed value+45% of Renovation Cost		\$6,163,565
Reasonable Return	6% of assessed value	6%	\$369,814
Projected Real Property Tax	13.241% of assessed value	13.241%	\$816,118

**Cost Approach: Minimum Habitability assuming income of \$869/month**

	Description	% Rate	Calculation
Current Assessed Value	2009 assessed value		\$2,533,500
Hard Costs	97 apartments x 41,427		\$4,018,419 Includes 15% contingency
Contingency	15% already included		\$0
Soft Costs	22% of Hard Costs	22.00%	\$884,052
45% of Renovation Costs	45% of hard cost + soft costs	45%	\$2,206,112
Assessed Value	2009 assessed value+45% of Renovation Cost		\$4,739,612
Reasonable Return	6% of assessed value	6%	\$284,377
Projected Real Property Tax	13.241% of assessed value	13.241%	\$627,572

**Cost Approach: Apartments Only (53) and Minimum Habitability (44)**

	Description	% Rate	Calculation
Current Assessed Value	2009 assessed value		\$2,533,500
Hard Costs - 53 Apartments	53 apartments x 52,471		\$2,780,963
Hard Costs - Windows	180 windows x 2000		\$360,000
Hard Costs - Minimum Habitability	44 minimum habitability x 41,427		\$1,822,788 Includes 15% contingency
Contingency	Hard cost of 53 apts + windows x 15%	15%	\$471,144
Soft Costs	22% of Hard costs + Contingency	22.00%	\$1,195,677
45% of Renovation Costs	45% of hard + soft costs	45%	\$2,983,758
Assessed Value	2009 assessed value+45% of Renovation Cost		\$5,517,258
Reasonable Return	6% of assessed value	6%	\$331,035
Projected Real Property Tax	13.241% of assessed value	13.241%	\$730,540





# **HARDSHIP RESOLUTION: APPENDIX C**

**Scenario: Reasonable Return of Apartments Only at Rents of \$40 per square leasable foot; \$11.96/gsf operating expense; 32.29% soft costs**

*Income information for 93 occupied apartments from C&W October 12, 2012 Report*

Income Type	Apartments	Cost/Sq. Leasable Foot	Income Amount	5% Vacancy Rate	Income minus 5% Vacancy Rate	Notes
Rental Income - Renovated Apartments	97	\$ 40	\$ 1,437,765	\$ 71,888	\$ 1,365,877	Projected income
Rental Income - Occupied Apartments	93		\$ 969,495	\$ 48,475	\$ 921,020	Actual income
Laundry Income			\$ 12,000	N/A	\$ 12,000	
Miscellaneous Revenue			\$ 12,500	N/A	\$ 12,500	
<b>Total</b>			<b>\$ 2,431,760</b>	<b>\$ 120,363</b>	<b>\$ 2,311,397</b>	

## **EXPENSES**

Expense Type	Apartments	Gross Square Feet	Cost/ Gross Sq. Foot	Expense Amount	Notes
Expenses - Exclusive of Real Estate Tax	N/A	84,826	\$ 11.96	\$ 1,014,519	
Real Estate Tax				\$ 541,818	See infra Appendix C.2
Depreciation				\$ 110,239	See infra Appendix C.1
<b>Total</b>				<b>\$ 1,666,576</b>	

*Note the Commission has chosen to use the depreciation amount that included an allocation for soft costs of 32.29% of hard costs, although the Commission does not believe that soft costs can be depreciated. Nevertheless, the Commission included this cost to be consistent with its decision in KISKA.*

**Profit/(Loss) \$ 644,821**

*This estimate of profit does not include any potential income from renovating the basements for laundry or storage facilities or the value from unused development rights.*

## **Reasonable Return**

Income Approach	\$245,518	See infra Appendix C.2
Cost Approach - 53 Apartments	\$281,028	Used for illustrative purposes only; see infra Appendix C.2
Cost Approach - 97 Apartments	\$388,184	Used for illustrative purposes only; see infra Appendix C.2



# **HARDSHIP RESOLUTION: APPENDIX C**

Scenario: Reasonable Return of Apartments Only at Rents of \$35 per square leasable foot; \$11.96/gsf operating expense; 32.29% soft costs

Income information for 93 occupied apartments from C&W October 12, 2012 Report

Income Type	Apartments	Cost/Sq. Leasable Foot	Income Amount	5% Vacancy Rate	Income minus 5% Vacancy Rate	Notes
Rental Income - Renovated Apartments	97	\$ 35	\$ 1,259,545	\$ 62,977	\$ 1,196,568	Projected income
Rental Income - Occupied Apartments	93		\$ 969,495	\$ 48,475	\$ 921,020	Actual income
Laundry Income			\$ 12,000	N/A	\$ 12,000	
Miscellaneous Revenue			\$ 12,500	N/A	\$ 12,500	
Effective Gross Income (EGI)			\$ 2,253,540	\$ 111,452	\$ 2,142,088	

## **EXPENSES**

Expense Type	Apartments	Gross Square Feet	Cost/ Gross Sq. Foot	Expense Amount	Notes
Expenses - Exclusive of Real Estate Tax	N/A	84,826	\$ 11.96	\$ 1,014,519	
Real Estate Tax				\$ 467,498	See infra Appendix C.2
Depreciation				\$ 110,239	See infra Appendix C.1
Total				\$ 1,592,256	

Note the Commission has chosen to use the depreciation amount that included an allocation for soft costs of 32.29% of hard costs, although the Commission does not believe that soft costs can be depreciated. Nevertheless, the Commission included this cost to be consistent with its decision in KISKA.

Profit/(Loss) \$ 549,832

This estimate of profit does not include any potential income from renovating the basements for laundry or storage facilities or the value from unused development rights.

## **Reasonable Return**

Income Approach	\$211,841	See infra Appendix C.2
Cost Approach - 53 Apartments	\$281,028	Used for illustrative purposes only; see infra Appendix C.2
Cost Approach - 97 Apartments	\$388,184	Used for illustrative purposes only; see infra Appendix C.2



# **HARDSHIP RESOLUTION: APPENDIX C**

**Scenario: Reasonable Return of Minimum Habitability at Rents of \$869/month; \$11.96/gsf operating expense; 32.29% soft costs**

*Income information for 93 occupied apartments from C&W October 12, 2012 Report*

Income Type	Apartments	Monthly Rent	Income Amount	5% Vacancy Rate	Income minus 5% Vacancy Rate	Notes
Rental Income - Renovated Apartments	97	\$ 869	\$ 1,011,516	50,576	\$ 960,940	Projected income
Rental Income - Occupied Apartments	93		\$ 969,495	48,475	\$ 921,020	Actual income
Laundry Income			\$ 12,000	N/A	\$ 12,000	
Miscellaneous Revenue			\$ 12,500	N/A	\$ 12,500	
Effective Gross Income (EGI)			\$ 2,005,511	\$ 99,051	\$ 1,906,460	

## **EXPENSES**

Expense Type	Apartments	Gross Square Feet	Cost/ Gross Sq. Foot	Expense Amount	Notes
Expenses - Exclusive of Real Estate Tax	N/A	84,826	\$ 11.96	\$ 1,014,519	
Real Estate Tax				\$ 375,997	See infra Appendix C.2
Depreciation				\$ 72,762	See infra Appendix C.1
Total				\$ 1,463,278	

*Note the Commission has chosen to use the depreciation amount that included an allocation for soft costs of 32.29% of hard costs, although the Commission does not believe that soft costs can be depreciated. Nevertheless, the Commission included this cost to be consistent with its decision in KISKA.*

**Profit/(Loss) \$ 443,183**

*This estimate of profit does not include any potential income from renovating the basements for laundry or storage facilities or the value from unused development rights.*

## **Reasonable Return**

Income Approach	\$170,378	See infra Appendix C.2
Cost Approach - 53 Apartments	\$230,434	Used for illustrative purposes only; see infra Appendix C.2
Cost Approach - 97 Apartments	\$295,541	Used for illustrative purposes only; see infra Appendix C.2



# **HARDSHIP RESOLUTION: APPENDIX C**

Scenario: Reasonable Return of Apartments Only for 53 apartments at Rents of \$35/square leasable foot also assuming Minimum Habitability renovation of 44 Apartments

## **INCOME**

Income Type	Apartments	Cost/Sq. Leasable		Income Amount	5% Vacancy Rate	Income minus 5% Vacancy		Notes
		Foot	Foot			Rate	Rate	
Rental Income - Renovated Apartments	53	\$ 35	-	\$ 688,205		34,410	\$ 653,795	Projected income
Rental Income - Renovated Apts	44	-	\$ 869	\$ 458,832		22,942	\$ 435,890	Projected income
Rental Income - Occupied Apartments*	93			\$ 969,495		48,475	\$ 921,020	Actual income
Laundry Income				\$ 12,000		N/A	\$ 12,000	
Miscellaneous Revenue*				\$ 12,500		N/A	\$ 12,500	
Effective Gross Income (EGI)				\$ 2,141,032	\$ 105,827		\$ 2,035,205	

\* Income information for 93 occupied apartments from C&W October 12, 2012 Report

## **EXPENSES**

Expense Type	Apartments	Gross Square Feet	Cost/ Gross Sq. Foot	Expense		Notes
				Amount	Amount	
Expenses - Exclusive of Real Estate Tax	N/A	84,826	\$ 11.96	\$ 1,014,519		
Real Estate Tax				\$ 409,207		See infra Appendix C.2
Depreciation				\$ 110,239		See infra Appendix C.1
Total				\$ 1,533,965		

Note the Commission has chosen to use the depreciation amount that included an allocation for soft costs of 32.29% of hard costs, although the Commission does not believe that soft costs can be depreciated. Nevertheless, the Commission included this cost to be consistent with its decision in KISKA.

**Profit/(Loss)** \$ 501,240

This estimate of profit does not include any potential income from renovating the basements for laundry or storage facilities or the value from unused development rights.

## **Reasonable Return**

Income Approach \$185,427 See infra Appendix C.2  
 Cost Approach - 53 Apartments \$281,028 Used for illustrative purposes only; see infra Appendix C.2  
 Cost Approach - 97 Apartments \$346,135 Used for illustrative purposes only; see infra Appendix C.2





**APPENDIX C.1: DEPRECIATION****Apartments Only: Depreciation without Soft Costs**

Item Type	Quantity in Units	Renovation Cost/Unit	Projected Cost	Contingency		Projected Renovation Cost
				Rate as % of Cost	Contingency Amount	
Vacant Apartments	53	\$52,471	\$2,780,963	15%	\$417,144.45	\$3,198,107
Windows	180	\$2,000	\$360,000	15%	\$54,000	\$414,000
			\$3,140,963		\$471,144	\$3,612,107

Depreciation: 2% x value of improvement w/o land + renovation cost

Value of Subject Buildings Exclusive of Land 733,500

Projected Renovation Cost 3,612,107

4,345,607

Depreciation 86,912

**Apartments Only: Depreciation with 32.29% Soft Costs**

Item Type	Quantity in Units	Renovation Cost/Unit	Projected Cost	Contingency		Soft Costs Rate as % of Cost	Soft Cost Amount	Projected Renovation Cost
				Rate as % of Cost	Contingency Amount			
Vacant Apartments	53	\$52,471	\$2,780,963	15%	\$417,144.45	32.29%	\$1,032,668.90	\$4,230,776
Windows	180	\$2,000	\$360,000	15%	\$54,000.00	32.29%	\$133,680.60	\$547,681
			\$3,140,963		\$471,144		\$1,166,349	\$4,778,457

Depreciation: 2% x value of improvement w/o land + renovation cost

Value of Subject Buildings Exclusive of Land \$733,500

Renovation Cost \$4,778,457

\$5,511,957

Depreciation \$110,239

**Minimum Habitability: Depreciation with 32.29% Soft Costs**

Item Type	Quantity in Units	Renovation Cost/Unit	Projected Cost	Contingency		Soft Costs Rate as % of Cost	Soft Cost Amount	Projected Renovation Cost
				Rate as % of Cost	Contingency Amount			
Vacant Apartments	53	\$41,427	\$2,195,631	15%	\$0.00	32.29%	\$708,969.25	\$2,904,600
Windows	0	-	\$0	15%	\$0.00	32.29%	\$0.00	\$0
			\$2,195,631		\$0		\$708,969	\$2,904,600

Depreciation: 2% x value of improvement w/o land + renovation cost

Value of Subject Buildings Exclusive of Land 733,500

Renovation Cost \$2,904,600

3,638,100

Depreciation \$72,762



**APPENDIX C.2:****ASSESSED VALUE AFTER RENOVATION, REASONABLE RETURN AND PROJECTED REAL ESTATE TAXES  
ASSUMING \$11.96/GSF OPERATING COST AND 32.29% SOFT COST****INCOME APPROACH*****Income Approach - Apartments Only Assuming Income at \$40 per square leasable foot***

	Description	% Rate	Calculation
Net Operating Income	Effective Gross Income (EGI) - Expenses	-	\$1,186,639 Expenses do not include real estate tax
Capitalized Market Value	NOI / Total cap rate 13.574	13.257%	\$9,093,266
Assessed Value	45% of capitalized market value	45%	\$4,091,969.70
Reasonable Return	6% of assessed value	6%	\$245,518
Projected Real Property Tax	13.241% of assessed value	13.241%	\$541,818

***Income Approach - Apartments Only Assuming Income at \$35 per square leasable foot***

	Description	% Rate	Calculation
Net Operating Income	Effective Gross Income (EGI)- Expenses	-	\$1,017,330 Expenses do not include real estate tax
Capitalized Market Value	NOI / Total cap rate 13.574	13.257%	\$7,845,962
Assessed Value	45% of capitalized market value	45%	\$3,530,683
Reasonable Return	6% of assessed value	6%	\$211,841
Projected Real Property Tax	13.241% of assessed value	13.241%	\$467,498

***Income Approach - Minimum Habitability Assuming Income of \$869/Month***

	Description	% Rate	Calculation
Net Operating Income	Effective Gross Income (EGI)- Expenses	-	\$819,179 Expenses do not include real estate tax
Capitalized Market Value	NOI / Total cap rate 13.574	13.257%	\$6,310,313
Assessed Value	45% of capitalized market value	45%	\$2,839,641
Reasonable Return	6% of assessed value	6%	\$170,378
Projected Real Property Tax	13.241% of assessed value	13.241%	\$375,997

***Income Approach - Apartments Only (53) and Minimum Habitability (44)***

	Description	% Rate	Calculation
Net Operating Income	Effective Gross Income (EGI)- Expenses	-	\$910,447 Expenses do not include real estate tax
Capitalized Market Value	NOI / Total cap rate 13.574	13.257%	\$6,867,672
Assessed Value	45% of capitalized market value	45%	\$3,090,452
Reasonable Return	6% of assessed value	6%	\$185,427
Projected Real Property Tax	13.241% of assessed value	13.241%	\$409,207

## COST APPROACH FOR 53 APARTMENTS

### Cost Approach: Apartments Only - 53 Apartments at both \$40 and \$35 per square foot

	Description	% Rate	Calculation
Current Assessed Value	2009 assessed value		\$2,533,500
Hard Costs	See depreciation tab for calculation		\$4,778,457 includes windows, contingency + soft cost
Soft Costs	Already included		\$0
45% of Renovation Costs	45% of hard + soft costs	45%	\$2,150,306
Assessed Value	2009 assessed value+45% of Renovation Cost		\$4,683,806
Reasonable Return	6% of assessed value	6%	\$281,028
Projected Real Property Tax	13.241% of assessed value	13.241%	\$620,183

**NOTE:** The Commission is applying the cost approach as put forward by the Applicant for illustrative purposes only. As noted above, the Applicant has not demonstrated that this is in fact the correct way to apply the cost approach, and the Commission's use herein does not imply otherwise.

### Cost Approach: Minimum Habitability assuming income of \$869/month

	Description	% Rate	Calculation
Current Assessed Value	2009 assessed value		\$2,533,500
Hard Costs	53 apartments x 41,427		\$2,195,631 Includes and 15% contingency
Contingency	Already included		\$0.00
Soft Costs	Hard costs + Contingency x 32.29%	32.29%	\$708,969
45% of Renovation Costs	45% of hard + soft costs	45%	\$1,307,070
Assessed Value	2009 assessed value+45% of Renovation Cost		\$3,840,570
Reasonable Return	6% of assessed value	6%	\$230,434
Projected Real Property Tax	13.241% of assessed value	13.241%	\$508,530

### Cost Approach: Apartments Only (53) and Minimum Habitability (44)

	Description	% Rate	Calculation
Current Assessed Value	2009 assessed value		\$2,533,500
Hard Costs - 53 Apartments	53 apartments x 52,471		\$2,780,963
Hard Costs - Windows	180 windows x 2000		\$360,000
Hard Costs - Minimum Habitability	Not applicable		\$0
Total Hard Costs			\$3,140,963
Contingency	Hard Costs x 15%	15%	\$471,144.45
Soft Costs	Hard costs + Contingency x 32.29%	32.29%	\$1,166,349
45% of Renovation Costs	45% of hard + soft costs	45%	\$2,150,306
Assessed Value	2009 assessed value+45% of Renovation Cost		\$4,683,806
Reasonable Return	6% of assessed value	6%	\$281,028
Projected Real Property Tax	13.241% of assessed value	13.241%	\$620,183

## COST APPROACH FOR 97 APARTMENTS

Cost Approach: Apartments Only - Same cost at both \$40 and \$35 per square foot

	Description	% Rate	Calculation
Current Assessed Value	2009 assessed value		\$2,533,500
Hard Costs	97 apts x 52,471+ 330 windows x 2,000		\$5,749,687
Contingency	15% of Hard costs	15%	\$862,453.05
Soft Costs	32.29% of Hard costs	32.29%	\$2,135,060
45% of Renovation Costs	45% of hard cost + contingency+ soft costs	45%	\$3,936,240
Assessed Value	2009 assessed value+45% of Renovation Cost		\$6,469,740
Reasonable Return	6% of assessed value	6%	\$388,184
Projected Real Property Tax	13.241% of assessed value	13.241%	\$856,658

**NOTE:** The Commission is applying the cost approach as put forward by the Applicant for illustrative purposes only. As noted above, the Applicant has not demonstrated that this is in fact the correct way to apply the cost approach, and the Commission's use herein does not imply otherwise.

Cost Approach: Minimum Habitability assuming income of \$869/month

	Description	% Rate	Calculation
Current Assessed Value	2009 assessed value		\$2,533,500
Hard Costs	97 apartments x 41,427		\$4,018,419 Includes 15% contingency
Contingency	Already included		\$0.00
Soft Costs	Hard costs + Contingency x 32.29%	32.29%	\$1,297,547
45% of Renovation Costs	45% of hard + soft costs	45%	\$2,392,185
Assessed Value	2009 assessed value+45% of Renovation Cost		\$4,925,685
Reasonable Return	6% of assessed value	6%	\$295,541
Projected Real Property Tax	13.241% of assessed value	13.241%	\$652,210

Cost Approach: Apartments Only (53) and Minimum Habitability (44)

	Description	% Rate	Calculation
Current Assessed Value	2009 assessed value		\$2,533,500
Hard Costs - 53 Apartments	53 apartments x 52,471		\$2,780,963
Hard Costs - Windows	180 windows x 2000		\$360,000
Hard Costs - Minimum Habitability	44 minimum habitability x 41,427		\$1,822,788 Includes 15% contingency
Contingency	Hard Costs x 15%	15%	\$471,144.45 For 53 apts and 180 windows only
Soft Costs	Hard costs + Contingency x 32.29%	32.29%	\$1,754,928
45% of Renovation Costs	45% of hard + soft costs	45%	\$3,235,420
Assessed Value	2009 assessed value+45% of Renovation Cost		\$5,768,920
Reasonable Return	6% of assessed value	6%	\$346,135
Projected Real Property Tax	13.241% of assessed value	13.241%	\$763,863

